

**PROFFERS**  
**GEORGELAS GROUP LLC**  
**RZ 2010-PR-014-D**

January 11, 2013

Pursuant to Section 15.2-2303(A) of the Code of Virginia (1950, as amended) and Section 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owners and applicant, for themselves and their successors and/or assigns (hereinafter collectively referred to as the "Applicant"), hereby proffer that the parcels under consideration and shown on the Fairfax County 2012 Tax Maps as 29-1 ((1)) 18C and 29-3 ((1)) 54A, 57, 57B, and 57G (the "Subject Property") shall be in accordance with the following conditions if, and only if, rezoning application 2010-PR-014-D (the "Rezoning") is granted.

The Subject Property is part of a larger rezoning known as "Spring Hill Station" which includes four related components identified as A, B, D and E (collectively referred to as "RZ 2010-PR-014"). The Subject Property is the subject of RZ 2010-PR-014-D. Property identified as 2012 Tax Map 29-3 ((1)) 48D is the subject of RZ 2010-PR-014-A, which was previously approved. Property identified as 2012 Tax Map 29-3 ((1)) 60C is the subject of RZ 2010-PR-014-B, which was previously approved. Property identified as 2012 Tax Map 29-3 ((1)) 63C is the subject of RZ 2010-PR-014-E. RZ 2010-PR-014 is divided into three neighborhoods referred to as 1, 2 and 3 and six areas identified as Areas A, B, D, E, F and G. The Subject Property is in Neighborhood 1 and is referred to as Area D.

**GENERAL**

1. Conceptual Development Plan. The Subject Property shall be developed in substantial conformance with the Spring Hill Station Demonstration Project Part D Conceptual Development Plan ("CDP") dated June 22, 2010 and revised through January 11, 2013, prepared by VIK A, Incorporated, WDG Architecture, PLLC, and ParkerRodriquez, Inc. The CDP includes two options; Option 1 represents the maximum office proposal, Option 2 represents the maximum residential proposal. The Applicant reserves the right to develop in accord with either option or a combination of the two options. The proffered elements of the CDP are limited to the grid of streets, general location of the points of access, general location of the buildings, uses (i.e. office, hotel, residential and retail/service), building heights, amount, general location and quality of urban park land, and general quality and character of the streetscape. Other elements of the CDP may be adjusted or modified with approval of future Final Development Plans ("FDPs") in accordance with the provisions set forth in Sect. 16-402 of the Fairfax County Zoning Ordinance (the "Zoning Ordinance").
2. Minor Modifications. Minor modifications to the CDP may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layout shown on the CDP without requiring approval of a Conceptual Development Plan

Amendment ("CDPA") provided such changes are in substantial conformance with the CDP as determined by the Zoning Administrator and do not affect the proffered elements of the CDP identified in Proffer 1, pursuant to Par. 4 of Sect.16-403 of the Zoning Ordinance.

3. Umbrella Owners' Association or Equivalent. The Applicant shall cause the recordation of an umbrella owners association ("UOA") or the equivalent in the form of one or more reciprocal easement and/or joint maintenance and/or joint development agreements, and other governance documents as necessary (collectively referred to as "UOA or equivalent"), to provide for various proffer and maintenance obligations, including but not limited to, implementation of the TDM program, maintenance of the private streets and sidewalks, streetscapes and furnishings therein, publicly accessible park areas and any private utility systems. Such governance documents shall be submitted to the Office of the County Attorney to ensure they provide for the various proffers and maintenance obligations not otherwise covered by separate agreement with Fairfax County (the "County") and/or the Virginia Department of Transportation ("VDOT"). Said UOA or equivalent may be expanded to include other properties subject to RZ 2010-PR-014 as well as additional nearby properties.

#### PROPOSED DEVELOPMENT

4. Proposed Development. The maximum gross floor area ("GFA") (gross floor area as currently defined in the Zoning Ordinance), permitted on the Subject Property is 2,786,000 square feet (the "Proposed Development"). Development of the Subject Property may include any use permitted in the Planned Tysons Corner Urban ("PTC") District, subject to limitations in the development tabulations on Sheet C-3A of the CDP and these Proffers. The primary uses of the Subject Property shall be office, hotel and multi-family residential dwellings, which may include accessory uses as defined by the Zoning Ordinance. The Retail/Service category provided in the development tabulations may include any non-residential use permitted in the PTC District, subject to the Use Limitations in Sect. 6-505, or uses accessory to the primary use.

The general extent and location of all Retail/Service uses shall be provided with the submission of each FDP, and shall be subject to review and approval. The GFA allocated to the Retail/Service category in each building as shown in the development tabulations on Sheet C-3A of the CDP may be shifted between buildings with an approved FDP, and the overall GFA allocated to the Retail/Service category may be increased without the need for a PCA or CDPA as long as the proposed increase is shown on an approved FDP and the maximum GFA for individual buildings is not exceeded.. Any increase in the GFA allocated to the Retail/Service category that results in Retail/Service uses in a single building exceeding 58,000 square feet shall result in a decrease in the GFA allocated to office uses on the Subject Property equal to the Retail/Service uses above 58,000 square feet in an individual building. Uses allowed by special exception or special permit in the PTC District may be authorized through a separate special exception or special permit process without the need for a PCA or CDPA, provided the use is in general conformance with the approved CDP and the applicable approved FDP.

5. Existing and Interim Structures and Uses.

- A. Except as provided in paragraph C below, the existing structures on the Subject Property, as shown on the CDP, may remain in use as an initial phase until such time as the portion of the Subject Property on which the existing structure(s) is located is redeveloped in accordance with this application, or as otherwise stated in these Proffers. The structures may not be modified or enlarged, except that minor modifications and minor building additions may be approved by the Zoning Administrator pursuant to the provisions of Par. 4 of Sect. 16-403 of the Zoning Ordinance or may otherwise be necessitated with the implementation of Proffer 22D. Interior modifications to the structures shall be permitted. Changes may be made to the site conditions as shown in the phasing Sheets A-6.0 through A-8.0 of the CDP and changes may be made to accommodate interim uses, including access modifications.

Those uses within the existing structures that are legally existing at the time of approval of this Rezoning but are not uses permitted in the PTC District include Vehicle Major Service Establishments, Warehouse Establishments, Wholesale Trade Establishments, Heavy Equipment and Specialized Vehicle Sale, Rental and Service Establishment, and Storage Yards (see Exhibit A). These uses may remain as permitted interim uses, but may not be enlarged, except that the Zoning Administrator may permit minor modifications or minor enlargements. If any such use is discontinued for a period of two years, it shall no longer be a permitted use.

- B. Privately owned and operated commercial interim off-street parking and commuter parking, at rates determined by the Applicant, shall be permitted in existing surface lots upon notification to FCDOT and without PCA/CDPA/FDP/FDPA approval and in new parking lots with a FDP as provided in paragraph C below, as an interim use on the existing properties at the sole discretion of the Applicant.
- C. Any use that is permitted in the PTC District, with the exception of residential and hotel uses, may also be permitted as an interim use subject to the Use Limitations in Sect. 6-505 and the provisions of Part A of this Proffer except that commercial off-street parking in new parking lots and large retail establishments (as defined in the Zoning Ordinance) shall not be permitted without FDP approval.
- D. Existing structures may be partially demolished to accommodate the construction in the early phases of development of the Subject Property. In that event, the portion of the existing structures to remain shall be included in the associated FDP for the purposes of coordinating site access, circulation and parking, and ensuring appropriate interim conditions and pedestrian improvements, but shall only be subject to transportation, streetscape or similar proffered improvements as shown on the approved FDP.
- E. Parking for any new interim uses shall be provided in accordance with Section 6-509 of the Ordinance.

6. Final Development Plans. FDPs approved for individual building sites on the Subject Property shall establish the primary use (based on Option 1 or Option 2 CDP tabulations) and the maximum GFA for each building within the limits established by these Proffers and the CDP. The specific GFA for each building shall be established at final site plan. If the GFA approved with the FDP is less than the maximum shown on the CDP, the excess GFA under the selected use option may be utilized in another building or building(s) of the same use within the Subject Property, provided the excess GFA can be accommodated within the maximum building height(s) shown on the CDP and subject to approval of the applicable FDP(s) or FDPA(s) for the buildings transferring and utilizing the excess GFA. In addition, the following information shall be provided with each FDP not filed concurrently with this rezoning application.

- A. Overall Tabulation. A tabulation indicating the development status of all property subject to RZ 2010-PR-014 A, B, D and E to include a listing of all existing and proposed buildings, along with the GFA, uses and parking approved on the CDP, FDP and site plan as may be applicable. The tabulation shall identify the reassignment of any excess GFA (as compared with what was originally shown on the applicable CDP) and shall be updated with each subsequent FDP and site plan approved for the Subject Property. A similar tabulation shall be provided on all site plans for the Subject Property.
- B. Tree Canopy Calculation. A tabulation indicating the tree canopy calculations of all property subject to RZ 2010-PR-014 A, B, D and E to be updated with each subsequent FDPA and site plan approved for the Subject Property.
- C. TDM Supplement. A copy of the previous TDM Annual Report, if available, to determine progress toward attaining TDM goals and any planned modifications to the TDM program.
- D. Sight Distance. Vehicular sight distance lines at all intersections within, and adjacent to, the FDP area overlaid on the Landscape Plan as provided in Proffer 21.
- E. Utilities. Approximate location of existing and proposed utilities to serve the area of the FDP including the location of the any utility vaults and maintenance points to stormwater management facilities overlaid on the Landscape Plan.
- F. Proposed Uses. A list of proposed uses and demonstration of how such uses meet the applicable "Use Limitations" of Section 6-505 of the Ordinance.
- G. Architectural Elements. Specific information on architectural elements as provided in Proffer 8.
- H. Build-to-Lines. Refinement of the build-to-lines based on proposed uses, location of possible outdoor dining areas, and identification of awnings and canopies that extend beyond the building zone, as provided in Proffer 9.

- I. Streetscape. A graphic depiction of, and any adjustments to, the activated streetscape elements as provided in Proffer 10 and refinement of, and adjustments to, streetscape elements as provided in Proffer 21.
- J. Garage Treatments. Proposed parking garage façade treatments as provided in Proffers 8 and 11.
- K. Landscaping. Detailed landscape plans as provided in Proffer 20.
- L. Streetscape Furnishings. Submission of a "Streetscape Furnishing and Materials Plan" as provided in Proffer 21.
- M. Interim Conditions. Identification of specific proposed interim conditions within the FDP area and outside the FDP area as provided in Proffer 22.
- N. Alley Easements. Location of private access easements in the service alleys in Buildings D1, D2A and D2B, as provided in Proffer 30.
- O. Phasing. Identification of specific proposed phased improvements in accordance with Proffer 7 and those generally set forth on the phasing-related exhibits provided on Sheets A-6.0 through A-8.0 of the CDP.
- P. Parking Spaces. Refinement of the number of parking spaces as provided in Proffer 39.
- Q. Parks and Recreation. Specific park details, site amenities and substitute recreation facilities as provided in Proffer 50.
- R. Residential Amenities. Specific facilities and amenities to be provided for each residential building
- S. Stormwater Management. Identification of specific stormwater management facilities and access points to underground vaults as provided in Proffers 21 and 58.
- T. Rights-of-Way. Identification of proposed right-of-way lines associated with all public streets.

If requested by the District Supervisor, individual FDPs for the Subject Property which are not concurrent with this original rezoning or filed in conjunction with a PCA shall be subject to review by the Board of Supervisors to determine if the FDP is in accordance with the approved CDP and complies with applicable zoning district regulations. The Applicant shall provide written notice to the District Supervisor upon initial submission of each FDP or FDPA application filed after approval of this original rezoning that is not filed concurrently with a PCA application, requesting a determination by the District Supervisor as to whether review by the Board of Supervisors is warranted.

7. Development Phasing. The Proposed Development includes seven (7) buildings, which are identified on the CDP as Buildings D1 through D6. Development of each individual building may proceed in any order provided that each such building provides the phasing conditions depicted for such building on the CDP and that all proffers that apply to such building are addressed with the redevelopment of that building. Where a proffer establishes an obligation that applies to a building, reference to "Applicant" in such proffer shall mean the party undertaking the development of such building.

The Applicant shall construct the grid of streets and provide pedestrian improvements, public parks, private amenities and public facilities on the Subject Property in conjunction with the development of each new building in accordance with the phasing exhibits provided on Sheets A-6.0 through A-8.0 of the CDP and as further described in these Proffers. In addition, interim improvements as outlined in Proffer 22 and as may be determined at time of FDP approval shall be provided commensurate with the construction of each building. Adjustments to the phasing may be approved with FDP approvals without the requirement for a PCA or CDPA, provided the adjustments do not materially adversely affect the other phases. For purposes of these Proffers "construct" shall mean that: 1) a committed road improvement is substantially complete and is available for use by the public for travel whether or not the improvement has been accepted for maintenance by the state, and 2) a committed publicly accessible park space improvement is substantially complete and open to use by the public for use whether or not the improvement has been accepted by the Fairfax County or FCPA.

## ARCHITECTURAL DESIGN

8. Building Design. The architectural treatment of all buildings within the Proposed Development shall create a sense of identity and place, and shall create human scale through the use of unifying elements such as materials, textures, color, window treatments, decorative details, lighting, and landscaping. Buildings shall be designed with high quality architecture and building materials that are typically used on the exterior of Class A office buildings and residential, retail and hotel buildings of a similar quality. FDPs shall specify design information on building materials, architecture, parking garage and loading space treatments, and specific features designed to activate streetscapes as described in Proffer 10. A minimum of 10 percent (10%) of all dwelling units shall be designed and constructed with some Universal Design features as determined by the Applicant.
9. Build-to-Lines. Build-to-lines ("BTL") have been established as depicted on Sheets C-6 and C-6A of the CDP, to create an urban, pedestrian-oriented environment where buildings are located close to the street and pedestrian/streetscape areas are located between the buildings and the streets. In general, building facades are intended to be configured in such a way as to provide a continuous street wall along this line, but modifications to either side of the BTL shall be permitted as shown on an approved FDP. Awnings and other architectural canopies attached to the building frontage that project out from the BTLs shall not extend beyond the building zone, except as may be shown on an approved FDP. At the time of FDP approval, the Applicant shall identify possible

locations along the street level for expanded areas for outdoor dining adjacent to cafes and restaurants and shall provide appropriate building zones for such uses.

10. Activated Streetscapes and Ground Floor Elements. The ground floors of all new buildings on the Subject Property, except those buildings with only residential uses on the ground floor, shall be designed and constructed with non-residential portions of ground floors having an average floor to floor height of 16 feet to accommodate potential non-residential uses designed to activate the streetscape. In addition, the Applicant shall provide for a hierarchy of activated streetscapes throughout the Subject Property as delineated on Sheet L-18 of the CDP and described below. The specific activation elements to be utilized for each building shall be graphically depicted on the FDP for review and approval.

A. Primary Circulation Zones. These areas are designed to accommodate major pedestrian activity, providing access to the Tysons-Spring Hill Road Metro Station (the "Metro Station") for walkers from the Subject Property and beyond and accommodating access to, and encouraging interaction with, a variety of uses on the Subject Property. Primary Circulation Zones shall generally incorporate the following elements, which may be adjusted with approval of an FDP:

- (i) The ground floors of buildings shall incorporate active uses along approximately 75% of the street frontage, with functioning entry doors into such applicable uses provided with a maximum separation of 50 feet or less, unless a greater separation is needed to accommodate larger tenant spaces or as may be permitted by the Zoning Administrator. Should the requirements of a larger tenant not accommodate multiple entries with a maximum spacing of 50 feet, the design of the façade shall incorporate glazed elements no more than 20 feet apart that are a minimum of 48 square feet in area.
- (ii) A minimum 70% of the area of the street front ground floor facades of such buildings shall be constructed with glazed windows and doors or other transparent materials.
- (iii) Parking structures along the ground floor facades of buildings shall be minimized, but where they occur, the general façade detailing of the building above shall be continued to the ground plane or display windows provided.
- (iv) Access to parking garages and loading/trash/service areas shall not be provided from Route 7 or Spring Hill Road. Loading/trash/service areas along other Primary Circulation Zones shall be minimized. Where such garage/loading/trash/service areas do occur along Primary Circulation Zones, they shall be screened from public view through the use of roll down doors or similar treatment.

B. Secondary Circulation Zones. These areas are designed to accommodate moderate pedestrian activity, providing access to the Tysons-Spring Hill Road Metro Station (the "Metro Station") for walkers from the Subject Property and beyond and accommodating access to a variety of uses on the Subject Property. Secondary Circulation Zones shall generally incorporate the following elements, which may be adjusted with approval of an FDP:

- (i) Where the ground floors of buildings incorporate non-residential uses, functioning entry doors into such applicable uses shall be provided with a maximum separation of 75 feet or less, unless a greater separation is needed to accommodate larger tenant spaces or as may be permitted by the Zoning Administrator. Should the requirements of a larger tenant not accommodate multiple entries with a maximum spacing of 75 feet, the design of the façade shall incorporate glazed elements no more than 20 feet apart that are a minimum of 48 square feet in area.
- (ii) A minimum 40% of the area of the street front ground floor facades of such buildings shall be constructed with glazed windows and doors or other transparent materials.
- (iii) In residential buildings that do not incorporate non-residential uses on part or all of the ground floors, the building design of the primary facades shall incorporate, to the degree feasible, recreational and amenity spaces on the ground floor with a minimum of 40% of the ground floor façade constructed with glazed windows and/or doors or other transparent materials, and/or incorporate entries in to individual dwelling units from the street level. If residential units have direct access to the streetscape from an individual unit, design features shall be employed to provide interior privacy (such as having a ground floor elevation that is above the sidewalk grade).
- (iv) Parking structures along the ground floor facades of buildings should be minimized, but where they occur, screening composed of architectural systems designed to restrict views into the garage spaces from street level shall be applied, or the general façade detailing of the building above may be continued to the ground plane.
- (v) Loading/trash/service areas along Secondary Circulation Zones shall be screened from public view through the use of roll down doors or similar treatment.

C. Tertiary Circulation Zones. These areas are designed to accommodate modest pedestrian activity making connections to less intense areas or through alleys. Tertiary Circulation Zones, not located along private alleys, shall incorporate the following elements:



- (i) Where the ground floors of buildings incorporate Non-Residential Uses, a minimum 25% of the area of the ground floor facades of such buildings shall be constructed with glazed windows and doors or other transparent materials.
- (ii) In residential buildings that do not incorporate Non-Residential Uses on part or all of the ground floors, efforts shall be made to incorporate, recreational and amenity spaces on the ground floor with appropriate transparency and/or incorporate entries into individual dwelling units from the street level. Residential units that have direct access to the streetscape from an individual unit shall utilize design features to provide interior privacy (such as having a ground floor elevation that is above the sidewalk grade).
- (iii) Parking structures along the ground floor facades of buildings should be minimized, but where they occur, screening composed of architectural systems designed to restrict views into the garage spaces from street level shall be applied, or the general façade detailing of the building above may be continued to the ground plane.
- (iv) Access to parking garages and loading/trash/service areas may be provided along tertiary circulation zones and from the adjacent private alleys; loading/trash/service areas along tertiary circulation zones shall be screened from public view through the use of roll down doors or similar treatment

11. Parking Structures. To further the goals of the Comprehensive Plan, above grade parking structures shall incorporate uses or screening at the ground level in keeping with Proffer 10, so as to provide a pleasant and attractive design/experience along the streetscape. In addition, one or more of the following techniques shall be employed to screen garage areas above the street level:

- A. Inclusion of an active layer of occupied space;
- B. Application of architectural screening materials that may include, but not be limited to, metal framing systems with inserted panels of wire mesh, metal, glass or other materials, and precast concrete or masonry spandrels designed to minimize views into the garage spaces from street level;
- C. Continuation of the general façade detailing of the tower above down to the top of the retail level storefront; or
- D. Extension of retail signage and architectural expressions above the retail level to provide a variety of storefront experiences, as may be permitted by the Zoning Ordinance or by an approved Comprehensive Sign Plan.

Parking structure design features shall be depicted on the FDP for review and approval.

12. Building Height. The final height for each building and specific steps in building height, including parking podia, shall be determined at the time of site plan or building permit approval, but shall not exceed the maximum building heights shown on the CDP, as measured from average grade. Building and podium heights may be less than the maximum heights shown on the CDP, provided the building retains a similar urban form to that shown on the CDP or the FDP. Should, at the time of FDP, a building be proposed at a height that is 60% or less of the maximum shown on the CDP, the maximum height of the building's parking podium shall also be reduced.

Structures that are excluded from the maximum height regulations as set forth in Sect. 2-506 of the Zoning Ordinance may be constructed to a height not to exceed thirty (30) feet from the roof level of the top floor of the building. All building penthouses and rooftop structures shall be integrated into the architecture of the building. The height and extent of any roof top penthouse shall be provided at FDP.

13. Telecommunications Equipment. Telecommunications equipment may be placed on the proposed buildings' rooftops. Any such facilities must comply with the applicable requirements of the Zoning Ordinance and be screened and/or setback sufficiently from the perimeter of the roof and penthouse such that they are not visible from the surrounding streets. Other screening measures may be used such as including the facilities as part of the architecture of the buildings, utilizing compatible colors, or employing telecommunication screening material and flush mounted antennas. Telecommunications equipment may also be architecturally integrated onto the facades of the building where necessary to ensure on-street and/or open space coverage. In addition, the Applicant shall provide for an additional conduit in its utility plans to accommodate future fiber and/or telecommunication connections on the Subject Property.

14. Fire Marshal. The Applicant has coordinated the layouts depicted on the CDP with the Fire Marshal. Further changes to the CDP and future FDPs shall be permitted without the requirement for a CDPA in response to the review of site plans by the Fire Marshal, including adjustments to the streetscape and perimeter building areas as necessary to allow for required emergency vehicle access, provided such modifications are made in consultation with the Fairfax County Department of Planning and Zoning ("DPZ"), FCDOT, and the Office of Community Revitalization ("OCR") and are in substantial conformance with the intent of the CDP, future FDPs and these Proffers.

#### BUILDING PRACTICES

15. Non-Residential Building Certifications.

A. The Applicant shall include, as part of the building plan submission for any non-residential building to be constructed on the Subject Property, a list of specific credits within the project's registered version of the U.S. Green Building Council's Leadership in Energy and Environmental Design Core and Shell (LEED®-CS) rating system, or other LEED rating system determined to be applicable by the U.S. Green Building Council (USGBC), or its equivalent (as determined jointly by the Applicant and Fairfax County), that the Applicant anticipate attaining.

Except as otherwise provided below in Paragraph E as an alternative, a LEED or equivalent-accredited professional (the "LEED-AP") who is also a professional engineer or architect shall provide certification statements at the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED-CS Silver certification of the building. At the time of building plan review, the LEED-AP shall also submit a statement detailing the expected building permit submission timelines to determine which building plan approval is expected to be final.

- B. The Applicant shall designate the Chief of the Environment and Development Review Branch of the DPZ as a team member in the USGBC's LEED Online system. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.
- C. Prior to the final building plan approval for the building to be constructed, the Applicant shall:
  - (i) Submit documentation, to the Environment and Development Review Branch of DPZ, regarding the USGBC's preliminary review of design-oriented credits in the LEED program. This documentation will demonstrate that the building is anticipated to attain a sufficient number of design-related credits that, along with the anticipated construction-related credits, will be sufficient to attain LEED-CS Silver certification.
  - (ii) Execute a separate agreement and post a "green building escrow" in the form of cash or a letter(s) of credit from a financial institution acceptable to DPWES as defined in the Public Facilities Manual (PFM), in the amount of \$2.00/square foot of GFA, as shown on the approved site plan. This green building escrow shall be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of LEED-CS Silver certification, by the USGBC, under the project's registered version of the LEED-CS rating system or other LEED rating system determined, by the USGBC, to be applicable to each building. The provision to the Environment and Development Review Branch of DPZ of documentation from the USGBC that each building has attained LEED-CS Silver certification will be sufficient to satisfy this commitment.
- D. At the time LEED-CS Silver certification is demonstrated to the Environment and Development Review Branch of DPZ, the escrowed funds and/or letter(s) of credit shall be released to the Applicant.

If the Applicant provides to the Environment and Development Review Branch of DPZ, within three (3) years of issuance of the final Non-RUP for the building, documentation demonstrating that LEED-CS certification for the building has not been attained but that the building has been determined by the USGBC to fall

within three (3) points of attainment of LEED-CS Silver certification, 50% of the green building escrow will be released to the Applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If the Applicant fails to provide, within three (3) years of issuance of the final Non-RUP for the building, documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED-Silver certification or demonstrating that the building has fallen short of LEED-CS Silver certification by three (3) points or less, the entirety of the escrow for that building will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If the Applicant provides documentation from the USGBC demonstrating, to the satisfaction of the Environment and Development Review Branch of DPZ, that USGBC completion of the review of the LEED-Silver certification application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the proffered time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made to the Applicant or to the County during the extension.

- E. As an alternative to the actions outlined in the Paragraphs A, C and D above, the Applicant may choose at its sole discretion to pursue a certification higher than LEED-CS Silver, in which case the LEED-AP will provide certification statements at the time of building plan review confirming that the items on the list of specific credits will meet at least the minimum number of credits necessary to attain LEED-CS Gold certification.

Prior to final building plan approval for the building to be constructed, the Applicant shall submit documentation, to the Environment and Development Review Branch of DPZ, regarding the USGBC's preliminary review of design-oriented credits in the LEED program. This documentation will demonstrate that the building is anticipated to attain a sufficient number of design-related credits that, along with the anticipated construction-related credits, will be sufficient to attain LEED-CS Gold certification. Under this alternative, the Applicant is not required to provide a "green building escrow" unless the Applicant fails to provide the above referenced documentation that the building is anticipated to attain LEED-CS Gold certification.

Prior to final bond release, the Applicant shall submit documentation to the Environment and Development Review Branch of DPZ, confirming the LEED certification received.

16. Residential Building Certifications.

- A. The Applicant shall include, as part of the building plan submission for each residential building to be constructed on the Subject Property, a list of specific credits within the project's registered version of the U.S. Green Building Council's Leadership in Energy and Environmental Design—New Construction (LEED®-NC) rating system, or other LEED rating system determined to be applicable by the U.S. Green Building Council (USGBC), or its equivalent (as determined jointly by the Applicant and Fairfax County), that the Applicant anticipates attaining.
- B. In addition, the Applicant shall designate the Chief of the Environment and Development Review Branch of the Department of Planning and Zoning (DPZ) as a team member in the USGBC's LEED Online system. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.
- C. Except as otherwise provided below as an alternative, a LEED or equivalent-accredited professional ("LEED-AP") who is also a professional engineer or licensed architect will provide certification statements at the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED-NC certification of the project. At the time of building plan review, the LEED-AP will also submit a statement detailing the expected building permit submission timelines to determine which building plan approval is expected to be the final building plan approval.
- D. Prior to final building plan approval, the Applicant will execute a separate agreement and post, for each building, a "green building escrow," in the form of cash or a letter of credit from a financial institution acceptable to DPWES as defined in the Public Facilities Manual ("PFM"), in the amount of \$2.00/square foot of GFA. This green building escrow will be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of LEED-NC certification, by the USGBC, under the project's registered version of the LEED-NC rating system or other LEED rating system determined, by the USGBC, to be applicable to each building. The provision to the Environment and Development Review Branch of DPZ of documentation from the USGBC that each building has attained LEED-NC certification will be sufficient to satisfy this commitment. At the time LEED-NC certification is demonstrated to the Environment and Development Review Branch of DPZ, the escrowed funds shall be released to the Applicant.

If the Applicant provides to the Environment and Development Review Branch of DPZ, within three (3) years of issuance of the final RUP for the building, documentation demonstrating that LEED-NC certification for the building has not been attained but that the building has been determined by the USGBC to fall within three (3) points of attainment of LEED-NC certification, 50% of the green

building escrow will be released to the Applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If the Applicant fails to provide, within three (3) years of issuance of the final RUP for the building, documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED-NC certification or demonstrating that the building has fallen short of LEED-NC certification by more than three (3) points, the entirety of the escrow for that building will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If the Applicant provides documentation from the USGBC demonstrating, to the satisfaction of the Environment and Development Review Branch of DPZ, that USGBC completion of the review of the LEED-NC certification application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the proffered time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made to the Applicant or to the County during the extension.

- E. As an alternative to the actions outlined in the paragraphs B and C above, the Applicant may choose at its sole discretion to pursue a certification higher than LEED-NC, in which case a LEED or equivalent-accredited professional will provide certification statements at the time of building plan review confirming that the items on the list of specific credits will meet at least the minimum number of credits necessary to attain LEED-NC Silver certification.

Prior to final building plan approval for the building to be constructed, the Applicant shall submit documentation, to the Environment and Development Review Branch of DPZ, regarding the USGBC's preliminary review of design-oriented credits in the LEED program. This documentation will demonstrate that the building is anticipated to attain a sufficient number of design-related credits that, along with the anticipated construction-related credits, will be sufficient to attain LEED-NC Silver certification. Under this alternative, the Applicant is not required to provide a "green building escrow" unless the Applicant fails to provide the above referenced documentation that the building is anticipated to attain LEED-NC Silver certification.

Prior to final bond release, the Applicant shall submit documentation to the Environment and Development Review Branch of DPZ, confirming the LEED certification received.

- 17. Sustainable Energy Practices. To promote efficient, renewable and sustainable energy practices, the Applicant shall provide:

- A. Electric Vehicle Charging Infrastructure. Each parking garage shall initially be constructed with a minimum of one (1) electric vehicle recharging station that

serves two (2) parking spaces and infrastructure (such as conduit) to facilitate additional future recharging stations.

- B. Shared Energy. For any site plan that includes more than one building, provide an assessment of the potential, within the area subject to the site plan, of shared energy systems, including but not limited to combined heat and power (CHP) (co-generation), micro-CHP, distributed energy resources, and district heating and/or cooling, and, if a shared energy strategy will not be pursued, provide a narrative discussion regarding the reason(s) for this outcome. At a minimum, the Applicant shall ensure that utility sleeves through the foundations of the proposed buildings, are sized to accommodate a pipe/facility, a maximum of 12 inches in diameter, allowing potential future energy sharing or alternate energy sources.
  - C. Energy and Water Data. To the extent there are master electric, gas and water meters for entire buildings, upon request by the County the Applicant shall provide to the County aggregated non-proprietary energy and water consumption data, as practicable, for the each building and the entire Subject Property.
18. Residential Interior Noise Level. The Applicant shall reduce the interior DNL to no more than 45 dBA for residential buildings on the Subject Property. At the time of building plan application for the full shell building permit for each residential building, the Applicant shall submit to the Chief of the Environment and Development Branch of DPZ (the "E&D Chief"), for approval, and to DPWES, for information only, an acoustical study prepared by a qualified acoustical consultant (the "Indoor Noise Study") addressing indoor noise levels, including proposed noise attenuation measures and materials to ensure compliance with the interior DNL limit of 45 dBA. The Applicant shall not obtain full-shell building permits until the E&D Chief has approved the applicable Indoor Noise Study, provided that a failure by the E&D Chief to review and respond to the Applicant within 60 days of receipt of the Indoor Noise Study shall be deemed approval of such study.
19. Bird-Friendly Design Elements. In an effort to reduce bird injury and death due to in-flight collisions with buildings, the Applicant shall include one or more bird friendly design elements, as determined by the Applicant, in the architectural plans of each building on the Subject Property. The bird friendly design elements may include, but not be limited to, the use of color, texture, opacity, fritting, frosting, patterns, louvers, screens, interior window treatments, or ultraviolet materials that are visible to birds, the angling of outside lights, curbing of excessive or unnecessary night-time illumination in commercial buildings, reduction of bird attracting vegetation, the use of decoys, and breaking of glass swaths. Nothing herein shall require the Applicant to obtain a bird-friendly LEED credit. Upon the issuance of a building permit for the building, the provisions of this Proffer shall be deemed satisfied as to such building.

## SITE DESIGN

20. Landscaping. The CDP includes a conceptual landscape plan for the Subject Property consisting of an overall plan and details regarding streetscapes, plazas, publicly accessible park areas including courtyards and private amenity areas. As part of subsequent FDP approvals, more detailed landscape plans for each building phase shall be provided in general conformance with the concepts included on Sheets L-8 through L-17 with adjustments permitted so long as the quantity and quality of the landscaping provided and the function of the space remains consistent with that shown on the CDP. Such plan shall include the location of all known utilities and sight distance requirements overlaid on the planting plan.

As part of the site plan submission for each building phase, the Applicant shall submit to the Urban Forestry Management Division ("UFMD") of the DPWES for review and approval a detailed landscape plan that is in substantial conformance with the quantity and quality of plantings and materials landscaping shown on the approved FDP, and shall include, among other things, irrigation information, design details for tree wells and other similar planting areas on structures and along streets. These details shall include the composition of planting materials, methods for providing suspended pavement over tree root zones to prevent soil compaction, and methods for ensuring the viability of plantings on structures.

21. Streetscaping. Streetscaping shall be installed throughout the Subject Property as conceptually illustrated on Sheets L-1 through L-6. Streetscape elements shall include: a landscape amenity panel located immediately behind the face of curb; a clear pedestrian sidewalk adjacent to the landscape amenity panel; and a building zone between the pedestrian sidewalk and the face of the building that is designed to allow access to the building and/or additional landscaping adjacent to residential uses and also storefront browsing, outdoor display, outdoor dining, and similar uses adjacent to Retail/Service uses. Streetscaping elements may be adjusted at the time of FDP approval provided the quality of the streetscape and minimum clear pedestrian sidewalks are consistent with that shown on the CDP.

- A. Street Trees. Tree planting sites are set forth on the CDP, subject to revision as may be approved on the FDP or at site plan review by the UFMD. Revisions may be necessitated to accommodate bus stop shelters, clear zones, and other similar requirements and shall not require a CDPA or FDPA. The Applicant shall retain the services of a certified arborist or Registered Consulting Arborist to monitor the design and inspect the planting of the street trees and shall notify UFMD in writing or by electronic mail no later than three business days prior to tree pit construction to allow for County inspection. Where minimum planting widths of eight (8) feet are not provided, alternative measures either as identified in the Tysons Urban Design Guidelines (endorsed by the Board of Supervisors of January 24, 2012) (the "Tysons Urban Design Guidelines") or as found acceptable to UFMD, shall be used to satisfy the following specifications for all planting sites:



- (i) A minimum of 4 feet open surface width and 16 square feet open surface area for Category III and Category IV trees, with the tree located in the center of the open area.
- (ii) A minimum rooting area of 8 feet wide (may be achieved with techniques to provide un-compacted soil below hardscape areas within the pedestrian realm), with no barrier to root growth within four feet of the base of the tree.
- (iii) A minimum soil depth of four (4) feet as measured to the shallow most point of the tree pit as shown in the tree planting details found on Sheet L-9 of the CDP.
- (iv) Soil volume for Category III and Category IV trees (as defined in Table 12.19 of the PFM) shall be 700 cubic feet per tree for single trees. For two trees planted in a contiguous planting area, a total soil volume of at least 600 cubic feet per tree shall be provided. For three or more trees planted in a contiguous area, the soil volume shall equal at least 500 cubic feet per tree. A contiguous area shall be any area that provides root access and soil conditions favorable for root growth throughout the entire area. Soil volumes as listed above may be reduced to a minimum of 400 cubic feet per tree where necessary, such as where paving above rooting zones is necessary to accommodate pedestrian traffic or where utility locations preclude greater soil volume.
- (v) Soil specifications in planting sites shall be provided in the planting notes to be included in all site plan submissions.
- (vi) All shade trees shall be a minimum of 3 to 3.5 inches in caliper at the time of planting; all flowering trees shall be a minimum of 2 inch caliper at the time of planting; and all new evergreen trees shall be a minimum of eight (8) feet in height at the time of planting.
- (vii) Trees zones shall be installed with a fully automatic drip irrigation system.
- (viii) It is expected that street trees may have to be planted within utility easements. The Applicant shall replace any street trees on-site or along its street frontages that are removed for repairs or improvements in those easements. Should replacement of such trees be required of the utility or others under another agreement, this requirement shall not apply to the Applicant.

B. Non-Invasive Plant Materials. Invasive species, as defined by the Fairfax County PFM, shall not be used within the streetscape and landscaped open space areas.

C. Utility Locations. Utilities, including, but not limited to water, sanitary sewer and storm sewer utility lines, shall be installed within the street network to the maximum extent feasible as determined by DPWES or shall be placed in locations

that do not conflict with the landscaped open space areas and streetscape elements shown on the CDP and/or subsequent FDP as determined by DPWES. If there is no other option, utilities may be placed within open space or streetscape areas provided that the long-term health of trees and other plantings is ensured by the provision of sufficient soil volume as shown on the CDP, as determined by the UFMD. A conceptual utility plan shall be overlaid on the landscape plan submitted in the FDP. Adjustments to the type and location of plantings shall be permitted to avoid conflicts with utilities and other site engineering considerations. If at the time of site plan approval, street trees shown on the FDP are in conflict with existing or proposed utilities and alternative locations for the street trees satisfactory to UFMD cannot be accommodated, the Applicant shall modify the location of utilities to ensure that the trees shown on the FDP can be provided.

Maintenance access points to SWM Facilities and electric vaults beneath the streetscape shall be located outside of the clear pedestrian walkway zone of the streetscape to the extent feasible. If the access points must be located in the walkway zone, they shall be designed as a lift out panel with the same paving materials as the walkway (subject to ADA requirements), be flush with the walkway, and meet ADA accessibility requirements. These maintenance access points shall be shown on each FDP.

- D. Sight Distance Considerations. Sight distances and anticipated road design speeds shall be depicted on the Landscape Plan submitted with each applicable FDP to demonstrate that the locations of all proposed street trees are viable. If determined at the time of site plan review that street tree locations conflict with sight distance requirements, the Applicant shall investigate whether limited pruning or minor adjustments to the locations of street trees will alleviate sight distance concerns. In the event VDOT does not approve the tree locations even after the changes anticipated above, the Applicant shall be permitted to relocate the affected street tree without the need for confirmation from DPZ, subject to approval by UFMD. If the deleted street tree(s) result in a tree canopy below 10% on the Subject Property, the street tree(s) must be accommodated in another location on the Subject Property, as approved by DPZ in consultation with UFMD.
- E. Streetscape Furnishings and Materials and Lighting. Unified and high quality streetscape materials shall be provided and may include, but not be limited to, unit pavers, seat walls, tree space edging, lighting, traffic signal poles, benches, trash receptacles and other hardscape elements. A Streetscape Furnishing and Materials Plan for elements in the landscape amenity panel and clear pedestrian sidewalk shall be provided as part of all FDPs. These plans shall include general product information and approximate locations of furnishings and materials to be located in the streetscape between the building face and the curb, and in other public realm open spaces and shall ensure that the proposed furnishings do not conflict with sight distance requirements. Materials, furnishings, and lighting shall be compatible with those already identified in the Tysons Corner Urban

Design Guidelines for the Tysons West area, dated January 14, 2012, as may be amended and or modified and shall be coordinated with any streetscape design efforts put forth by the Tysons Partnership, but shall not be subject to approval by Tysons Partnership.

All streetscape lighting shall be energy efficient. All on-site, outdoor and parking garage lighting shall not exceed that permitted under the Outdoor Lighting Standards of Section 14-900 of the Zoning Ordinance, as may be amended. The same or similar street lights shall be used consistently throughout the Proposed Development and be selected from those listed in the Tysons Urban Design Guidelines, or other lights as may be approved by DPZ and OCR. All parking lot and building mounted security lighting shall utilize full cut-off fixtures. Recessed lighting shall be directionally shielded to mitigate the impact on adjacent properties.

- F. Signage and Wayfinding. Signage for the Subject Property shall be provided in accordance with the requirements of Article 12 of the Zoning Ordinance. Alternatively, the Applicant may seek approval of a Comprehensive Sign Plan ("CSP"). The placement of all signage on existing/planned public streets is subject to VDOT review and/or approval. Wayfinding signage and elements shall be coordinated with the Tysons Partnership so to facilitate a consistent wayfinding and signage system throughout the district, but shall not be subject to approval by Tysons Partnership. Wayfinding shall provide direction to locations of prominent attractions, parks, cultural arts destinations, and other public amenities.
- G. Tysons Urban Design Guidelines. The Applicant reserves the right, at its sole discretion, to utilize and follow in part, or in whole, the guidelines in lieu of the design specifications of these Proffers related to the specifications covered by such guidelines.
- H. Maintenance. The Applicant or UOA shall maintain and replace in-kind all pedestrian realm elements within the Proposed Development. The pedestrian realm includes all areas between the back of curb and the building zone whether located within the public right-of-way or on private land with public access easements. The Applicant or UOA shall enter into the appropriate agreement, in a form approved by the Office of the County Attorney, with the County (or other public entity, as needed) to permit the Applicant to perform such maintenance. An alternative maintenance agreement, such as a Business Improvement District, may be entered into upon written agreement of both the County and the Applicant without the requirement for a PCA. Maintenance commitments include, but are not limited to:
  - (i) All plantings including trees, shrubs, perennials, and annuals;
  - (ii) All associated irrigation elements;

- (iii) All hard surfaces;
- (iv) All streetscape furnishings including benches, bike racks, trash and recycling receptacles and non-standard structures;
- (v) All lighting fixtures;
- (vi) All non-VDOT standard sign posts, traffic signal poles, pedestrian signal poles, mast arms, signal heads and control boxes;
- (vii) Snow removal;
- (viii) Leaf removal;
- (ix) Trash, recycling and litter removal;
- (x) Decorative retaining walls;
- (xi) Special drainage features, such a Low Impact Design facilities; and
- (xii) All urban park amenities including horticultural care, maintenance of all water features, irrigation, lighting, furnishings, paving, and art.

Phasing of streetscaping is discussed within the context of individual phases in Proffer 7. As determined at the time of FDP approval, where the final streetscape design cannot be fully implemented during certain phases of development, the Applicant shall provide interim streetscape improvements as described in Proffer 22.

22. Interim Conditions and Standards. Due to the size of the Proposed Development and the time anticipated for its build-out, phased redevelopment may result in various interim conditions on the Subject Property. At the time of FDP submission, the Applicant shall identify the specific proposed interim conditions within the FDP area and outside the FDP area and shall ensure such conditions provide reasonable pedestrian connections, vehicular circulation and access, temporary streetscaping and landscaping, public park treatments, and screening/treatment of exposed/partially complete above grade parking structures.

- A. If an interim condition/phase includes partial demolition of an existing structure, the FDP for that phase shall include all or a portion of the existing structure as necessary to ensure revisions to parking and on-site circulation for the existing structure are adequate.
- B. If interim improvements not located on the Subject Property are contemplated with any FDP, such FDP shall specify how and when such improvements are to be constructed. In the event the Applicant is unable to acquire the right-of-way and/or easements necessary to construct such interim improvement through a cooperative agreement with the owners, the Applicant shall request in writing that Fairfax County acquire the easements or rights-of-way by means of its condemnation powers as described in Proffer 61. At the time of FDP approval, it

shall also be determined what course of action shall be required of the Applicant should the County elect not to use, or is unsuccessful in its attempt to use, its condemnation powers.

C. Interim conditions shall comply with the following general standards provided that the improvements are acceptable to Fairfax County, VDOT, and all other utility companies as may be appropriate:

- (i) Construction of interim sidewalks a minimum of a five (5) feet in width and installation of interim street lights along the interim sidewalks, the selection of which shall be approved with the applicable FDP, as needed to ensure a safe, convenient pedestrian path to the Metro Station
- (ii) Installation of street trees, with a minimum size of 2 inch caliper, approximately every 50 feet, to the extent feasible as determined by UFM based on existing conditions and utility easements. Interim street tree planting shall not be required to meet the minimum planting width/area standard for permanent street trees.
- (iii) Provision of interim designs for publicly accessible open spaces will include interim landscaping, pedestrian pathways, seating, signage, lighting and recreational facilities as determined at FDP.
- (iv) Provision of peripheral and interior parking lot landscaping in accordance with Article 13-203 of the Zoning Ordinance for interim surface parking lots, unless waived or modified at the time of FDP or site plan approval.
- (v) Application of a screening system (which may be removable) where above grade garage structures that will be interior when later phases are complete are exposed at phase lines. This screening system shall be applied to all levels above grade and shall be composed of an architecturally designed system that may reflect basic architectural lines of the permanent facades, and that shall partially obscure the garage view from outside the garage until the next phase is constructed. The use of temporary art works as a part of the screening system shall also be considered as part of the interim screening system. The specific screening system to be utilized for each building shall be determined at the time of FDP approval and graphically depicted on the FDP. Alternate temporary garage screening may be approved with FDP approval.
- (vi) Grading and seeding of areas on the Subject Property where existing improvements are removed to accommodate a portion of the Proposed Development, and are not scheduled to commence construction within 12 months.
- (vii) Where appropriate, provision of attractive temporary construction fencing, which may include public art, signage or wayfinding elements. Signage

shall be in keeping with Article 12 of the Zoning Ordinance or alternatively in accordance with an approved Comprehensive Sign Plan.

- D. Should Buildings D2-A and D2-B be constructed prior to the issuance of a site development permit for the construction of Building D1, the Applicant shall provide for interim “placemaking” uses on the Building D1 site, which may, or may not, replace all existing or interim uses on the Building D1 site. This may include the reuse of the existing structure and outdoor areas, or portions thereof, to create a festive, pedestrian-oriented destination. This may include, but not be limited to, eating establishments, retail uses, outdoor dining, recreational uses, performance spaces, farmers markets and/or other outdoor exhibits and fairs. As an alternative, the Building D1 site or portions thereof may be developed as an interim park or an interim commercial parking lot with placemaking opportunities. The details of the interim use of the D1 site shall be reviewed and approved at the time of FDP approval for Buildings D2-A and/or D2-B. These interim placemaking or park uses on the D1 site shall be provided prior to the issuance of the 100<sup>th</sup> RUP for the second of the D2-A and D2-B buildings to be constructed.

#### TRANSPORTATION IMPROVEMENTS

23. Grid of Streets. For the purposes of these Proffers, Route 7 (Leesburg Pike) and Broad Street shall be considered to run east-west and Spring Hill Road and Tyco Road shall be considered to run north-south. The Applicant shall construct and open for use to the public a proposed grid of streets as generally located and depicted on Sheets C-6 through C-8 of the CDP and as set forth in these Proffers. The functional classification of those roadways comprising the grid of streets is summarized below:

Street	Classification
Route 7 – Leesburg Pike	Boulevard
Spring Hill Road	Avenue
Tyco Road	Collector
Broad Street	Collector
Merchant Street	Local
Pierpoint Street	Local

A. Right-of-Way.

- (i) The Applicant shall dedicate right-of-way along the Subject Property’s frontage for each of the streets listed above to the adjacent property line(s) and to a point inclusive of the landscape amenity panel and the sidewalk or to such standard as may be approved on the FDP. The deed of dedication shall include a requirement that the area of the landscape amenity panel/sidewalk, exclusive of the building zone, be utilized for public purposes limited to streetscape improvements, sidewalks, pedestrian access, underground utilities, traffic signal poles, traffic-related

and wayfinding signage, bus stops, bus shelters and vehicular ingress and egress to adjacent properties. Should Fairfax County not agree with the inclusion of this requirement, the Applicant shall dedicate and convey in fee simple right-of-way measuring 18 inches from the proposed face of the curb line.

- (ii) The Applicant shall work diligently with VDOT and Fairfax County during the FDP and site plan approval processes to ensure that the streets and the area of the landscape amenity panel/sidewalk can be accepted as public streets. The Applicant shall dedicate and convey in fee simple right-of-way including the area of the landscape amenity panel/sidewalk to the Board of Supervisors at the time of site plan approval, with the following exceptions:

- a. If at the time of site plan approval it is determined that stormwater management facilities, electric vaults or other similar facilities proposed to be located beneath the landscape amenity panel/sidewalk will prevent VDOT and/or Fairfax County from accepting the landscape amenity panel/sidewalk within the right-of-way, the Applicant shall provide dedication measuring 18 inches from the proposed face of curb line and shall reserve for potential future dedication the landscape amenity panel and sidewalk areas. A temporary public access easement in a form acceptable to the County Attorney shall be recorded over the reserved landscape amenity panel/sidewalk areas until such time as such areas are dedicated. This reservation area shall include easements that allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant shall provide easements within the amenity panel/sidewalk area for bus shelters as determined at the time of FDP or site plan. Conveyance of the amenity panel/sidewalk areas to the Board of Supervisors shall occur following construction of the street and streetscape improvements and final street acceptance inspection by Fairfax County and/or VDOT subject to the stipulations in these Proffers.

Should it be determined following final street acceptance inspection that the landscape amenity panel and sidewalk areas continue to be unacceptable to VDOT and/or Fairfax County for inclusion in the right-of-way, the reservation of potential future dedication of the landscape amenity panel and sidewalk areas shall be released and the Applicant shall grant a public sidewalk and utility easement, in a form acceptable to the Office of the County Attorney. This easement shall allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the

Applicant shall provide easements within the amenity panel area for bus shelters as determined at the time of FDP or site plan.

- b. If at the time of site plan approval it is unclear whether stormwater management facilities, electric vaults or other similar facilities proposed to be located beneath the landscape amenity panel/sidewalk will be acceptable to VDOT and/or Fairfax County, the Applicant shall provide dedication measuring 18 inches from the proposed face of curb line at the time of site plan approval and shall reserve for potential future dedication the landscape amenity panel and sidewalk areas. A temporary public access easement in a form acceptable to the County Attorney shall be recorded over the reserved landscape amenity panel/sidewalk areas until such time as such areas are dedicated. The reservation area shall include easements that allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant shall provide easements within the amenity panel/sidewalk area for bus shelters as determined at the time of FDP or site plan. Conveyance of the amenity panel/sidewalk areas to the Board of Supervisors shall occur following construction of the street and streetscape improvements and final street acceptance inspection by Fairfax County and/or VDOT subject to the stipulations in these Proffers.

Should it be determined following final street acceptance inspection that the landscape amenity panel and sidewalk areas are not acceptable to VDOT and/or Fairfax County to be included in the right-of-way, the reservation of potential future dedication of the landscape amenity panel and sidewalk areas shall be released and the Applicant shall grant a public sidewalk and utility easement, in a form acceptable to the Office of the County Attorney. This easement shall allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant shall provide easements within the amenity panel area for bus shelters as determined at the time of FDP or site plan.

- (iii) All right-of-way dedications shall be subject to advanced density credit as specified in Proffer 65.

- B. Definition of Construct. For purposes of this Proffer "construct" shall mean that the committed road improvement is open to use by the public for travel whether or not the improvement has been accepted for maintenance by VDOT. The Applicant shall diligently pursue acceptance of all improvements as public streets.



- C. VDOT Approval. All public street improvements proposed herein shall be subject to VDOT approval and be in general conformance with the standards included in Attachment D (*Transportation Design Standards for Tysons Corner Urban Center*) of the Memorandum of Agreement approved by the Board of Supervisors on September 13, 2011, as may be amended (the "Transportation Design Standards"), subject to modifications as may be granted.
- D. Public Streets. Those streets constructed within the limits of the Subject Property and identified on the CDP as Broad Street, Pierpoint Street, and Merchant Street shall be designed and constructed as public streets in general conformance with the Transportation Design Standards, as may be amended (subject to modifications as may be granted). The Applicant shall design these streets to meet the Transportation Design Standards and be accepted by VDOT for maintenance as public streets. In the event VDOT and FCDOT determine at the time of final street acceptance inspection, that any street does not satisfy VDOT criteria to be accepted in to the State System or if otherwise agreed to by the County at the time of FDP approval or site plan approval, the street shall be maintained as a private street by the Applicant. A public access easement in a form acceptable to the Office of the County Attorney shall be granted for the street and appurtenant facilities associated with any private streets as well as to facilitate County transit bus, inspection and emergency access, and other public access needs; such public access easement to become effective upon completion of the street.

In some instances, the Applicant will be constructing interim street improvements. The Applicant shall work diligently with VDOT and FCDOT to ensure that, when feasible, interim street sections can be accepted for public maintenance by VDOT.

- E. Naming. The Applicant reserves the right to provide different names for the streets than those shown on the CDP.
- F. Parking Lanes. The Applicant shall accommodate on-street parking throughout the limits of the Subject Property as generally shown on Sheets C-6 through C-8 of the CDP and as may be adjusted with FDP approval. The County and VDOT may restrict parking during peak commuting periods (typically 6:00 to 9:00 AM and 4:00 to 7:00 PM), in order to provide for turning movements to/from the public and/or private street network or to provide additional travel lanes. If requested by the County and/or VDOT, the Applicant shall install signs restricting parking.

The Applicant reserves the right to restrict the use of on-street parking spaces along any future public streets prior to dedication for use as temporary or short term parking, car-sharing parking and/or similar uses, through appropriate signage or such other means as the Applicant determines appropriate, . If requested by the County, the Applicant shall remove on-street parking to address street capacity needs. Prior to acceptance, the Applicant shall remove any signs the County or VDOT deems necessary to remove.

24. Tyco Road.

- A. The Applicant shall design and construct improvements to Tyco Road along the Subject Property's frontage as generally depicted on Sheets C-6 through C-8 of the CDP. A one-half section of Tyco Road shall be constructed in general accordance with the typical sections depicted on Sheet C-8, as an undivided four-lane Collector, with two travel lanes in each direction and variable pavement provided to accommodate pavement transitions as may be required by VDOT.
- B. Improvements to Tyco Road along the Subject Property's frontages shall include a pavement section designed to accommodate a bicycle lane and a designated circulator lane. Striping of a bicycle lane shall be subject to the approval of the County and VDOT. For the section of Tyco Road along the Subject Property's frontage between Route 7 and Pierpoint Street, the designated circulator lane may be used as an interim right-turn lane until such time circulator service is initiated. For the section of Tyco Road north of Pierpoint Street along the Subject Property's frontage, the designated circulator lane may be used for curbside parking subject to County and VDOT approval prior to initiation of circulator service.
- C. Street improvements to Tyco Road shall be undertaken and completed for the entire length of block between two planned streets, however streetscape improvements may be completed on a building frontage basis, unless otherwise determined at FDP.
- D. Should it be determined at the time of FDP approval for Buildings D1, D3 or D4 that an additional right turn lane is required at the southbound approach to Route 7, the Applicant shall construct the additional lane. Construction of this right turn lane will require off-site rights-of-way and/or easements from properties identified as 2012 Tax Map 29-1 ((1)) 17B and 29-3 ((1)) 55.
  - (i) In the event the Applicant is unable to acquire the right-of-way and/or easements necessary to construct the above improvement through a cooperative agreement with the owners, which may include a reservation of advanced density credit for dedicated rights-of-way consistent with the Zoning Ordinance, then the Applicant shall submit a written request to Fairfax County in accordance with Proffer 60 asking the County to use its powers of condemnation to acquire those off-site rights-of-way and/or easements to facilitate the construction of the above improvement.
  - (ii) In the event the County elects not to use its powers of condemnation to acquire those off-site rights-of-way and/or easements, then the Applicant shall be relieved of its obligation to construct the right turn lane and such right turn lane shall not be a condition of any site plan approval. The Applicant shall escrow with DPWES its reasonably determined pro-rata share of the cost of the future construction of the right turn lane by others.

- E. The final design of the improvements to Tyco Road as generally described above shall be further refined in conjunction with the submission of FDPs and all site plans associated with those portions of the Subject Property fronting Tyco Road. Construction of Tyco Road improvements shall be provided commensurate with the development of Building D1, D2A, D2B, D3 and D4.

25. Spring Hill Road.

- A. The Applicant shall design and construct Spring Hill Road along the Subject Property's frontage as generally depicted on Sheets C-6 through C-8 of the CDP. A one-half section of Spring Hill Road shall be constructed in general accordance with the typical section depicted on Sheet C-8, to include a raised concrete median, with two travel lanes in each direction and additional pavement/widening provided at select locations to accommodate certain turning movements and/or pavement transitions as may be required by VDOT and as also depicted on Sheets C-6 through C-8 of the CDP.
- B. Improvements to Spring Hill Road shall include pavement to accommodate a bicycle lane and a designated circulator lane along the Subject Property's frontage. Striping of a bicycle lane shall be subject to the approval of the County and VDOT. Until such time as circulator service is initiated, the designated circulator lane may be used for interim curbside parking if approved by the County and VDOT.
- C. The final design of the improvements to Spring Hill Road as generally described above shall be further refined in conjunction with the submission of a FDP and site plan for Building D6 and construction, including, subject to VDOT approval, the extension of the existing median from its current terminus to Broad Street, shall be provided in conjunction with development of Building D6.

26. Broad Street. Broad Street from Tyco Road to Spring Hill Road shall be designed in general accordance with that shown on Sheets C-6 and C-6A which represents the ultimate Broad Street section to include two (2) travel lanes in each direction, on-street bicycle lanes in each direction, and a parking lane in select areas. The Applicant shall construct portions of Broad Street as follows:

- A. From Spring Hill Road to Pierpoint Street, the Applicant shall construct the interim section of Broad Street shown on Sheet C-7 ("Interim Broad Street – Alternate A"). Construction of this section will require off-site right-of-way and/or easements from the adjacent parcel identified as 2012 Tax Map 29-3((1)) 56A ("Parcel 56A").
  - (i) In the event the Applicant is unable to acquire the right-of-way and/or easements necessary to construct the above improvement through a cooperative agreement with the owners, which may include a reservation of advanced density credit for dedicated rights-of-way consistent with the Zoning Ordinance, then the Applicant shall submit a written request to Fairfax County in accordance with Proffer 60 asking the County to use its powers of condemnation to acquire those off-site rights-of-way and/or

easements to facilitate the construction of the above improvement. Concurrent with this request, the Applicant shall be entitled to file a site plan for the construction of an alternate interim design for Broad Street between Spring Hill Road and Pierpoint Street shown on Sheets C-7A and C-7B ("Interim Broad Street – Alternate B"). If the County acquires those off-site rights-of-way and/or easements necessary to facilitate the construction of Interim Broad Street – Alternate A by condemnation or otherwise, then the Applicant shall revise its site plan to accommodate the Interim Broad Street – Alternate A design.

- (ii) In the event the County elects not to use its powers of condemnation to acquire those off-site rights-of-way and/or easements to facilitate the construction of Interim Broad Street – Alternate A, the Applicant shall be relieved of its obligation to construct the Interim Broad Street – Alternate A and instead be permitted to construct Interim Broad Street – Alternate B between Spring Hill Road and Pierpoint Street.
- B. From Pierpoint Street to Tyco Road, the Applicant shall construct a four (4) lane cross section to include two (2) travel lanes in each direction with on-street bicycle lanes in each direction, and a parking lane on the north side of the street where feasible and as may be approved by VDOT, transitioning to a section with parking lanes on both sides of the street west of Merchant Street as depicted on Sheets C-6 and C-6A. Construction of this four lane section will require off-site rights-of-way and/or easements from the adjacent parcels identified as 2012 Tax Map 29-1 ((8)) and 29-3 ((16)).
  - (i) In the event the Applicant is unable to acquire the right-of-way and/or easements necessary to construct the above improvement through a cooperative agreement with the owners, which may include a reservation of advanced density credit for dedicated rights-of-way consistent with the Zoning Ordinance, then the Applicant shall submit a written request to Fairfax County in accordance with Proffer 60 asking the County to use its powers of condemnation to acquire: 1) those off-site rights-of-way and/or easements to facilitate the construction of the above improvement; or 2) as an alternative, less extensive off-site rights-of-way and/or easements necessary to facilitate the construction of a three lane interim section of Broad Street as depicted on Sheets C-7, Interim Broad Street – Alternate A . Concurrent with this request, the Applicant shall be entitled to file a site plan for the construction of an alternate interim design for Broad Street between Pierpoint Street and Tyco Road shown on Sheet C-7B and ("Interim Broad Street – Alternate C"). If the County acquires those off-site rights-of-way and/or easements necessary to facilitate the construction of Interim Broad Street – Alternate A by condemnation or otherwise, then the Applicant shall revise its site plan to accommodate the Interim Broad Street – Alternate A design.

- (ii) In the event the County elects not to use its powers of condemnation to acquire those off-site rights-of-way and/or easements to facilitate the construction of either of the two above alternative improvements, then the Applicant shall be relieved of its obligation to construct either the four or three lane section of Broad Street and instead be permitted to construct a two lane interim section of Broad Street as depicted on Sheet C-7B ("Interim Broad Street – Alternate C"). The Applicant shall escrow with DPWES the cost differential between constructing the two lane interim section of Broad Street and the ultimate four lane section of Broad Street, and shall reserve and then dedicate the full width of the street to its ultimate configuration within the Subject Property in accordance with Proffer 23A.
- C. Should Building D5 be constructed prior to the construction of Building D4, the Applicant shall be permitted to construct Broad Street from Spring Hill Road to the entrance to the Building D5 garage entrance as shown in the Phase D5 exhibit on Sheet A-7.0 of the CDP. In this event, the Applicant shall escrow with DPWES the hard construction costs of extending the ultimate four lane section of Broad Street across the remainder of Building D5's Broad Street frontage. Such escrowed funds shall be released to the entity completing construction of Broad Street as anticipated in Proffer 26F.
- D. The design of the improvements to Broad Street as generally described does not include a sidewalk on the north side of the street except adjacent to Public Urban Park 2. The design above shall be refined with the FDPs for those buildings on the Subject Property with frontage on Broad Street (D4, D5 and D6) and final design shall be determined in conjunction with the submission of the site plans for Buildings D4, D5 and D6. If at the time of FDP or site plan approval, the County in conjunction with the Applicant determines that the interim lane configuration should be different than that described in paragraphs A and B above, the interim improvements may be adjusted without requirement of a PCA, CDPA, or FDPA.
- E. The Applicant shall provide any necessary ancillary and reasonable easements on the Subject Property to facilitate the construction of the ultimate section of Broad Street by others if necessary.
- F. Broad Street shall be constructed to connect Spring Hill Road and Tyco Road when Building D4 and either of Buildings D5 or D6 are constructed. This connection shall be complete and open for public use prior to the issuance of the first Non-RUP or RUP for the second building in either the combination of Buildings D4 and D5 or the combination of Buildings D4 and D6.

27. Pierpoint Street.

- A. The Applicant shall design and construct Pierpoint Street across the Subject Property as generally depicted on Sheets C-6 through C-8 of the CDP. It shall be constructed in general accordance with the typical section depicted on Sheet C-8 as a Local Street 44 feet in width consisting of 4 travel lanes (two in each

direction) to accommodate either travel or parking depending on the traffic needs. Such improvements shall be made commensurate with the development of buildings on the Subject Property with frontage on Pierpoint Street.

- B. The final design of the improvements to Pierpoint Street as generally described above shall be further refined in conjunction with the submission of any FDP and all site plans for those portions of the Subject Property fronting Pierpoint Street and construction shall be provided in conjunction with the Subject Property's development on this frontage.
- C. The section of Pierpoint Street on Parcel 54A shall be dedicated for public street purposes at the time of site plan approval for first of either Building D1 or D2-A and the section of Pierpoint Street on Parcel 57B shall be dedicated for public street purposes at the time of site plan approval for the first of either Buildings D5 or D6. Following dedication, the Applicant shall provide any necessary ancillary and reasonable easements on the Subject Property to facilitate the construction of Pierpoint Street by others if necessary.
- D. At the time of FDP approval for Buildings D5 and/or D6, the Applicant shall study the feasibility of providing a pedestrian connection from the western terminus of Pierpoint Street to the Spring Hill Metro Station Kiss and Ride Lot on adjacent property shown on the Fairfax County Max Maps as 29-1 ((1)) 53, 53A, 57H and 57J, recognizing that an ADA compliant pedestrian connection may not be possible. If it is determined feasible and the necessary easements to construct the pedestrian connection are provided by the owner of the Parcels 53, 53A, 57H and 57J at no cost to the Applicant, then the Applicant shall construct the connection. Issuance of RUPs or Non-RUPs for Buildings D5 or D6 shall not be contingent on construction of this connection.

28. Merchant Street.

- A. The Applicant shall design and construct Merchant Street across the Subject Property's limits as generally depicted on Sheets C-6 and C-6A of the CDP. Merchant Street shall be constructed in general accordance with the typical section depicted on Sheet C-8 as a Local Street 48 feet in width consisting of 4 travel lanes (two in each direction) to accommodate either travel or parking depending on the traffic needs, with variable pavement/widening provided at select locations to accommodate certain turning movements and/or pavement transitions.
- B. If Merchant Street has not been constructed on the adjacent property identified on the Fairfax County 2012 Tax Maps as 29-3 ((1)) 57H ("Parcel 57H"), when the Applicant is constructing Building D4, the Applicant shall construct the portion of Merchant located on Parcel 57H. Construction of this section will require off-site rights-of-way and/or easements from Parcel 57H. The Applicant's obligation to construct the off-site portion of Merchant Street is contingent on the required off-site rights-of-way and/or easements from Parcels 57H being made available at no cost to the Applicant. If said rights of-way and/or easements are not available at

no cost to the Applicant, then the Applicant shall be relieved of its obligation to construct the off-site portion of Merchant Street, and shall instead construct a temporary private section of Merchant Street along the frontage of Building D4 as depicted on Sheets C-7A, C-7B and C-7C of the CDP. In this event, the Applicant shall escrow with DPWES the cost of removing the interim section from the Subject Property and the cost of reconstructing that portion of the ultimate section of Merchant Street on the Subject Property, to be constructed in the future by others and shall provide all necessary easements and right-of-way dedication to facilitate this construction by others.

- C. The final design of the improvements to Merchant Street as generally described above shall be further refined in conjunction with the submission of any FDP and all site plans for those portions of the Subject Property fronting Merchant Street. If it is determined at FDP or site plan that a reduction in the 44 foot section of Merchant Street is appropriate, the section may be reduced as approved by the County and VDOT. Construction shall be provided commensurate with development on the Subject Property's Merchant Street frontage.
  - D. Prior to issuance of the first RUP or Non-RUP for Building D3 or D4, the Applicant shall record a public access easement across the constructed portions of Merchant Street, in a form approved by the County Attorney, to permit future access from adjacent properties to the southeast. Said connections are to be provided by others. Under no circumstance shall the granting of this easement preclude the approval of site plans for development for the remainder of the Subject Property.
29. Advance Access Consideration. Provided the Georgelas Group LLC or a related entity has taken title to Parcel 57, the Georgelas Group LLC or related entity shall, upon request, make Parcel 57 available to another party for access purposes. Parcel 57 shall be made available upon (i) reimbursement by the other party of the Georgelas Group LLC or a related entity's costs of acquisition and all commercially reasonable expenses associated with the acquisition and rezoning of Parcel 57, (ii) agreement of the other party to construct Broad Street across Parcel 57 by a time certain or provide its pro-rata share of the cost of Broad Street between Pierpoint Street and Spring Hill Road and permit the Applicant to construct the section, and (iii) agreement of the other party to grant Applicant access to Broad Street across Parcel 57 and any extensions of Pierpoint Street across the property of such other party.
30. Service Alleys.
- A. The Applicant shall construct a service alley within Building D1 immediately adjacent to its eastern boundary as depicted on Sheets C-6 and C-6A. The service alley shall provide access to garage, loading and service areas for Building D1 from Pierpoint Street and shall be designed and constructed with "knock-out panels" to allow future connection to, and use by, a potential future building to be constructed on adjacent property to the east identified as 2012 Tax Map 29-3 ((1)) 53.

- B. The Applicant shall also construct a service alley through Buildings D2A and D2B immediately adjacent to its eastern boundary connecting Pierpoint Street and Merchant Street as depicted on Sheet C-6 and C-6A. The service alley shall provide access to garage, loading and service areas for Building D2A and D2B and shall be designed and constructed with "knock-out panels" to allow future connection to, and use by, potential future buildings to be constructed on adjacent property to the east identified as 2012 Tax Map 29-1 ((1)) 17B and 29-3 ((1)) 55.
- C. The general location of the private access easements shall be shown on the applicable FDPs. Deeds of easements in a form acceptable to the Office of the County Attorney shall be granted over the alleys for the benefit of the adjacent parcels; such private access easements to become effective upon completion of Buildings D1, D2A and D2B.

31. Circulator Accommodations. The Applicant shall dedicate the rights-of-way for the circulator route along the Subject Property's frontages with Spring Hill Road and Tyco Road as shown on Sheet C-8 of the CDP at site plan approval for Buildings D1, D3, D6 and the first of either Buildings D2A or D2B. The Applicant shall construct the asphalt vehicular lane for circulator use in conjunction with the construction of other street frontage and streetscape improvements as specified in these Proffers. Prior to operation of the circulator the street area may be used for on-street parking as may be permitted by the County and VDOT.

32. Traffic Signals.

- A. Broad Street with Tyco Road and Spring Hill Road. A warrant study for the installation of two new traffic signals on Broad Street at its intersection with Spring Hill Road and Tyco Road shall be submitted within twelve (12) months after the issuance of the first initial RUP or Non-RUP for the first of Buildings D4, D5 or D6. If one or more signals is deemed warranted by VDOT at that time, then such traffic signals, including pedestrian enhancements as may be required by VDOT, shall be designed, equipped and installed by the Applicant. In the event one or more of the signals are not warranted, the Applicant shall escrow with DPWES the building's pro-rata share of the signal(s).

If not previously warranted with the first of Buildings D4, D5 or D6, the Applicant shall submit a second warrant study within twelve (12) months after the issuance of the first initial RUP or Non-RUP for the second of those buildings fronting on Broad Street. If warranted by VDOT at that time, the Applicant shall design, equip and install such signals including pedestrian enhancements as required by VDOT. In the event one or more of the signals are not warranted, the Applicant shall escrow with DPWES the building's pro-rata share of the signal(s).

If not previously warranted with the second of Buildings D4, D5 or D6, the Applicant shall conduct a third and final warrant study within twelve (12) months after the first initial RUP or Non-RUP for the third of those buildings fronting on Broad Street. If warranted by VDOT at that time, the Applicant shall design, equip and install such signals including pedestrian enhancements as may be



required by VDOT. In the event one or more of the signals are not warranted, the Applicant shall escrow with DPWES the building's pro-rata share of the signal(s).

- B. Merchant Street and Tyco Road. A warrant study for the installation of a new traffic signal at the Merchant Street and Tyco Road intersection shall be submitted within twelve (12) months after the issuance of the first initial RUP or Non-RUP for the first of either Building D2B or D3. If a signal is deemed warranted by VDOT at that time, then such traffic signal, including pedestrian enhancements as may be required by VDOT, shall be designed, equipped and installed by the Applicant. In the event a signal is not warranted, the Applicant shall escrow with DPWES the building's pro-rata share of the signal.

If not previously warranted with the first of either Building D2B or D3, the Applicant shall submit a second warrant study within twelve (12) months after the issuance of the first initial RUP or Non-RUP for the remaining building (D2-B or D3.) If warranted by VDOT at that time, the Applicant shall design, equip and install such signal including pedestrian enhancements as required by VDOT. In the event a signal is not warranted, the Applicant shall escrow with DPWES the building's pro-rata share of the signal.

- C. Pierpoint Street and Tyco Road. A warrant study and operational analysis for the installation of a new traffic signal at the Pierpoint Street and Tyco Road intersection shall be submitted within twelve (12) months after the issuance of the first initial RUP or Non-RUP for the first of new buildings D1 or D2-A. If a signal is deemed warranted by VDOT at that time, then such traffic signal, including pedestrian enhancements as may be required by VDOT, shall be designed, equipped and installed by the Applicant. In the event a signal is not warranted, the Applicant shall escrow with DPWES the building's pro-rata share of the signal.

If not previously warranted with the first of new buildings D1 or D2-A, then the Applicant shall submit a second warrant study within twelve (12) months after the issuance of the first initial RUP or Non-RUP for the remaining building (D1 or D2-A). If warranted by VDOT at that time, the Applicant shall design, equip and install such signal including pedestrian enhancements as required by VDOT. In the event a signal is not warranted, the Applicant shall escrow with DPWES the building's pro-rata share of the signal.

- D. Prior to the issuance of a Non-RUP for Building D1, the Applicant shall modify or replace the existing traffic signal at Tyco Road and Route 7 to accommodate the revised intersection as required by VDOT, including installation of pedestrian enhancements across the northern and eastern legs of the intersection subject to VDOT approval.
- E. For any signal warranted by VDOT, the Applicant shall provide VDOT with the requisite traffic signal plans for review and approval. All right-of-way associated with signal equipment (poles, equipment boxes, etc.) on the Subject Property not

already dedicated shall be reserved for dedication in fee simple to the Board of Supervisors in accordance with Proffer 23A.

If off-site right-of-way or easements associated with signal equipment (poles, equipment boxes, etc.) is required for the installation of warranted signals, the Applicant shall seek such off-site right-of-way or easements through a cooperative agreement with the owners. In the event the Applicant is unable to acquire the right-of-way and/or easements necessary to install the signal(s) through a cooperative agreement with the owners, then the Applicant shall contribute to Fairfax County its reasonably determined pro-rata share towards the future installation of said signal(s) by others. In such event, the Applicant's obligation to construct or in any manner further pay for such signal(s) is deemed null and void the proffered commitment with regard to said signal(s) of no further effect.

- F. For any signal warranted by VDOT, the Applicant shall be entitled to the use of any pro-rata share contributions collected by Fairfax County with respect to such warranted signals.
  - G. Upon request of the Applicant or on the County's own initiative, the Zoning Administrator may (1) agree to a later date for completion of the traffic signal installation(s) or (2) permit the Applicant to proceed without the signal installations.
33. Signal Optimization. The Applicant shall analyze the signal operations in the Route 7 Corridor, from the Dulles Airport Access Road and Toll Road ("the Toll Road") to Westpark Drive/Gosnell Road and provide recommendations for optimizing signal timing to VDOT. The Applicant shall also provide this analysis for signals on Spring Hill Road from Route 7 to the intersection of International Drive and along Tyco Road between Route 7 and Spring Hill Road if those signals identified in Proffer 32 are installed. If modification recommendations for the Spring Hill Road and Tyco corridors are acceptable to VDOT, the Applicant shall implement these optimizations. Such analyses shall be provided with on or before the issuance of a building permit for the fourth building on the Subject Property.
34. Bus Shelters. Bus shelter locations shall be evaluated for the property on which a site plan has been submitted for approval for feasibility at the time of site plan approval in consultation with FCDOT and VDOT. Identified bus shelter locations shall be within the landscape amenity panel of the streetscape to the extent feasible and shall not impede convenient access to building entries. Bus shelter locations may necessitate adjustments to street tree locations and other street furnishings from that shown on the CDP which shall be accommodated without the requirement for a CDPA or FDPA.
35. Construction Traffic Management. The Applicant shall prepare and implement a construction management plan during construction of each phase, as appropriate, through its development/construction manager so as to provide safe and efficient pedestrian and vehicle circulation at all times on the Subject Property and on the public roadways

adjoining the Subject Property. The management plan shall identify anticipated construction entrances, construction staging areas, construction vehicle routes and procedures for coordination with FCDOT and/or VDOT concerning construction material deliveries, lane or street closures, and/or other construction related activities to minimize disturbance on the surrounding road network.

Such plans shall be prepared by a qualified professional and submitted for review and comment to the VDOT, FCDOT and DPWES upon submission of the initial site plan for each phase.

36. Tysons Grid of Streets Transportation Fund. The Applicant shall provide a contribution of \$1000 for each residential unit and \$6.44 for each square foot of new non-residential space constructed on the Subject Property to Fairfax County for the Tysons Grid of Streets Transportation Fund in keeping with the Guidelines for the Tysons Grid of Streets Transportation Fund adopted by the Board of Supervisors on January 8, 2013, except as may be modified in these Proffers. The contribution amount due shall be adjusted for all creditable expenditures described herein.

The Applicant shall receive credits against the contributions that would otherwise be due to the Tysons Grid Fund for the following costs:

- A. Costs incurred by the Applicant in the acquisition of off-site right-of-way and associated easements, including costs borne by the Applicant associated with any Fairfax County condemnation actions, for the construction of off-site public streets and intersection improvements, such as portions of Broad Street, Merchant Street and Tyco Road; and
- B. Costs incurred by the Applicant for the construction of all or a part of off-site public streets, such as Broad Street, Merchant Street and Tyco Road, (not including costs of the Subject Property's frontage improvements).

#### BICYCLE FACILITIES

37. Bicycle Circulation. In combination with the street and streetscape improvements identified in these Proffers, the Applicant shall provide pavement and, subject to County and VDOT approval, striping for on-road bicycle lanes along the Subject Property's frontages with Tyco Road, Spring Hill Road and Broad Street, as may be further provided in these Proffers. Such lanes shall typically be four (4) to six (6) feet in width as shown on Sheet C-8 with the final dimension determined at the time of site plan approval. Bicycle lane striping shall be subject to approval by VDOT.
38. Bicycle Parking. The Applicant shall provide bicycle racks, bike lockers, and bike storage areas throughout the Subject Property, the specific locations of which shall be determined at the time of site plan approval. The bike racks shall be inverted U-style racks or other design approved by FCDOT in consultation with OCR. The total number of bike parking/storage spaces and related facilities shall be consistent with the Fairfax

County Policy and Guidelines for Bicycle Parking for each building or group of buildings as determined at site plan.

## PARKING

39. Zoning Ordinance Requirements. Parking on the Subject Property shall be provided in accordance with the parking requirements for the PTC District set forth in Sect. 6-509 and Article 11 of the Zoning Ordinance, and as shown on the CDP. The exact number of spaces to be provided shall be refined with approval of the Final Development Plan(s) (the "FDPs") and determined at the time of site plan approval based on the specific uses, number of residential units and bedroom mix. If changes in the mix of uses or residential bedroom mix result in parking greater than that anticipated on the CDP, the additional parking spaces shall be accommodated within the proposed parking structures, without increasing the height or mass of the parking structures.
40. Phasing of Parking. Parking shall be provided in phases commensurate with development of the Subject Property. Parking spaces in excess of the maximum parking ratios set forth in the Ordinance may be provided in the early phases of development of the Subject Property, provided that at the build-out of the Subject Property, the maximum parking rates are not exceeded. Required parking spaces for an individual building need not be provided on the parcel on which the building is located, but shall be provided within the Subject Property.
41. Future Parking Revisions. The Applicant reserves the right to provide parking at revised rates (rates referring to the number of parking spaces provided per dwelling unit for residential uses or per square foot of GFA for Office, Hotel and Retail/Service uses) as may be permitted by a future amendment to the Zoning Ordinance. Optional use of revised rates shall not require a CDPA or PCA, provided there is no increase in the size or height of above-grade parking structures.
42. Parking Stipulations.
  - A. The Applicant shall provide controlled access to the parking garage and shall ensure that the control equipment is capable of counting vehicles entering and exiting the garage.
  - B. The sale or lease rates of parking spaces shall be "unbundled" from the purchase price or lease rate of the individual dwelling units; meaning a unit's purchase price or lease rate shall be exclusive of parking costs.

## TRANSPORTATION DEMAND MANAGEMENT

43. Tysons Transportation Management Association. The Applicant shall contribute to Fairfax County funds for the establishment of a future transportation management association (the "TMA") pursuant to paragraphs A and B hereof, which may be

established for the Tysons Corner Urban Center and which all other Tysons property owners will also be required to contribute to.

- A. The Applicant shall make a one-time contribution to the establishment of this future TMA based on a participation rate of \$0.10 per gross square foot of new office uses and \$0.05 per gross square foot of new residential uses to be constructed on the Subject Property.
  - B. The contribution to the TMA shall be paid prior to site plan approval for each new residential or office building to be constructed on the Subject Property.
  - C. If subsequent to the approval of this Rezoning, a Tysons Corner Urban Center-wide TMA is approved by FCDOT and established for the purpose of administering TDM programs in the Urban Center, then the Applicant may, at its sole discretion, join or otherwise become associated with such entity and transfer some or all functions of this TDM Program to the new entity, whereupon this Proffer in whole or in part shall be void and of no further force or effect. Further, if determined by FCDOT that a proactive, private TDM program is no longer necessary, the TDM structure in this Proffer may be rendered null and void in whole or in part without the need for a PCA.
  - D. If the TMA has not been established within three (3) years after the approval of this Rezoning, this Proffer shall be null and void and with no further effect on the Subject Property. Further, any funds contributed to the TMA by the Applicant would then be returned.
44. Transportation Demand Management Plan. The proffered elements of the TDM Program as set forth below are more fully described in the Spring Hill Station Transportation Demand Management Plan prepared by UrbanTrans dated August 22, 2011 (the "TDM Plan") and such revisions to the Plan as prepared by Wells + Associates, Inc. dated September 2012. It is the intent of this Proffer that the TDM Plan will adapt over time to respond to the changing transportation related circumstances of the Subject Property, the surrounding community and the region, as well as to technological and/or other improvements, all with the objective of meeting the trip reduction goals as set forth in these Proffers. Accordingly, modifications, revisions, and supplements to the TDM Plan as coordinated with FCDOT can be made without the need for a PCA provided that the TDM Plan continues to reflect the proffered elements of the TDM Program as set forth below.
- A. Definitions. For purposes of this Proffer, "Stabilization" shall be deemed to occur one-year following issuance of the last initial RUP or Non-RUP for the final new building to be constructed on the Subject Property. "Pre-stabilization" shall be deemed to occur any time prior to Stabilization.
  - B. Trip Reduction Objective. The objective of this TDM Program shall be to reduce the vehicle trips generated by residents and/or office tenants of the Subject Property (i.e., not including trips from hotel and retail uses), during weekday peak hours associated with the adjacent streets as more fully described in the TDM

Plan, by meeting the percentage vehicle trip reductions established by the Comprehensive Plan as set forth below. These trip reduction percentages shall be multiplied by the total number of new residential and office vehicle trips that would be expected to be generated by the uses developed on the Subject Property as determined by the application of the Institute of Traffic Engineers, 8th Edition, Trip Generation rates and/or equations (the "ITE Trip Generation"), and the number of trips determined by the product of such equation shall be referred to herein as the "Maximum Trips After Reduction." For purposes of this calculation, the maximum number of dwelling units or the total gross square footage of office uses proposed to be constructed in each new building on the Subject Property as determined at the time of site plan approval for each building shall be applied to the calculation described in the preceding sentence. The target reductions shall be as follows:

<u>Development Levels</u>	<u>Percentage Vehicle Trip Reduction</u>
Up to 65 million sq.ft. of GFA	30%
65 million sq.ft. of GFA	35%
84 million sq.ft. of GFA	40%
90 million sq.ft. of GFA	43%
96 million sq.ft. of GFA	45%
105 million sq.ft. of GFA	48%
113 million sq.ft. of GFA	50%

The trip reduction goals outlined above are predicated on the achievement of specific development levels within the Tysons Corner Urban Center as anticipated in the Comprehensive Plan. Prior to undertaking trip measurements, the TPM shall, in consultation with the County, provide a summary of the then existing (i.e., based on RUPs and Non-RUPs issued) development levels in Tysons Corner in order to determine the appropriate vehicle trip reduction goal.

If through an amendment to the Comprehensive Plan, the Board of Supervisors should subsequently adopt a goal for trip reductions that is lower than that committed to in this Proffer, then the provisions of this Proffer shall be adjusted accordingly without requiring a PCA.

- C. Process of Implementation. The TDM Program shall be implemented as follows, however modifications, revisions, and supplements to the implementation process as set forth herein and coordinated with FCDOT can be made without requiring a PCA.
  - (i) TDM Program Manager. If not previously appointed, the Applicant shall appoint and continuously employ, or cause to be employed, a TDM Program Manager (TPM) for Spring Hill Station. If not previously appointed, the TPM shall be appointed by the Applicant no later than sixty (60) days after the issuance of the first building permit for the first new office or residential building to be constructed on the Subject Property.

The TPM's duties may be part of other duties associated with the appointee. The Applicant shall notify FCDOT and the District Supervisor in writing within 10 days of the appointment of the TPM. Thereafter the Applicant (or UOA as applicable) shall do the same within ten (10) days of any change in such appointment.

- (ii) Reporting and Budgeting. The TPM shall prepare and submit to FCDOT an initial TDM Work Plan ("TDMWP") and Annual Budget no later than 180 days after issuance of the first building permit for the first new building on the Subject Property. Every calendar year thereafter, but no later than February 1st, the TPM shall submit an Annual Report, which may revise the Annual Budget in order to incorporate any new construction on the Subject Property.

The Annual Report shall assess the success of the previous year's program, suggest modifications or enhancements to program elements and establish a budget to cover the costs of implementation of the TDM Program for the coming year. At a minimum the Annual Report shall include:

- a. Specific details associated with the monitoring and reporting requirements of the TDM Program in accordance with the TDM Plan;
- b. Submission of the results of any Person Surveys and Vehicular Trip Counts conducted on the Subject Property;
- c. A summary of the development in Spring Hill Station, as well as the then existing development levels in the Tysons Corner Urban Center;
- d. A determination of the applicable Maximum Trips After Reduction for the Subject Property;
- e. Details as to the components of the TDM Program that will be put into action that year; and
- f. Any revisions to the Annual Budget needed to implement the TDM Program for the coming year. The expected annual budget amounts are described in the TDM Plan.

The Annual Report and Budget shall be reviewed by FCDOT. If FCDOT has not responded with any comments within sixty (60) days after submission, then the Annual Report and Budget shall be deemed approved and the TDM Program elements shall be implemented. If FCDOT responds with comments on the Annual Report and Budget, then the TPM will meet with FCDOT staff within fifteen (15) days of receipt of the County's comments. No later than thirty (30) days after the meeting, the TPM shall submit such revisions to the TDM Program and/or Annual

Budget as discussed and agreed to with FCDOT and begin implementation of the approved program and fund the approved Annual Budget.

- (iii) TDM Account. If not previously established, the Applicant, through the TPM, shall establish a separate interest bearing account with a bank or other financial institution qualified to do business in Virginia (the "TDM Account") within 30 days after approval of the Annual Budget. All interest earned on the principal shall remain in the TDM Account and shall be used by the TPM for TDM purposes. The TDM Account shall be funded by the Applicant until the end of the Applicant Control Period and managed by the TPM; thereafter, the Account shall be funded by the UOA. The TDM Account shall not be eliminated as a line item in the Subject Property's governing budget and funds in the TDM Account shall not be utilized for purposes other than to fund TDM strategies/programs and/or specific infrastructure needs as may be approved in consultation with FCDOT.

Funding of the TDM Account shall be in accordance with the Annual Budget for the TDM Program elements to be implemented in a year. In no event shall the Spring Hill Station TDM Budget overall exceed \$200,000 (this amount shall be adjusted annually as set forth in Proffer 62). The TPM shall provide written documentation to FCDOT demonstrating the establishment of the TDM Account within ten (10) days of its establishment. The TDM Account shall be replenished annually, as necessary, thereafter following the establishment of each year's Annual Budget.

- (iv) TDM Remedy Fund. At the same time the TPM establishes and funds the TDM Account, the TPM shall establish a separate interest bearing account (referred to as the "TDM Remedy Fund") with a bank or other financial institution qualified to do business in Virginia. Funding of the TDM Remedy Fund shall be made one time on a building by building basis at the rate of \$0.40 per gross square foot of new office uses and \$0.30 per gross square foot of new residential uses on the Subject Property. Funding shall be provided by the Applicant prior to the issuance of the first initial RUP or Non-RUP for the applicable new building. This amount shall be adjusted annually as set forth in Proffer 62. Funds from the TDM Remedy Fund shall be drawn upon only for purposes of immediate need for TDM funding and may be drawn on prior to any Annual Budget adjustments as may be required.
- (v) TDM Incentive Fund. The "TDM Incentive Fund" is an account into which the Applicant, through the TPM, shall deposit contributions to fund a multimodal incentive program for initial purchasers/lessees within Subject Property. Such contributions shall be made one time on a building by building basis at the rate of \$0.02 per gross square foot of new office and residential uses to be constructed on the Subject Property and



provided prior to the issuance of the first initial RUP or Non-RUP for each new building.

- (vi) TDM Penalty Fund. The "TDM Penalty Fund" is an account into which the Applicant, through the TPM, shall deposit penalty payments as may be required pursuant to this Proffer for non-attainment of trip reduction goals. The County may withdraw funds from the TDM Penalty Fund for the implementation of additional TDM Program elements/incentives and/or congestion management within or proximate to the Spring Hill Station area. To secure the Applicant's obligations to make payments into the TDM Penalty Fund, the Applicant shall provide the County with a letter of credit or a cash escrow as further described below.

Prior to the issuance of the first RUP or Non-RUP for each new building on the Subject Property, the Applicant shall:

- a. Establish the TDM Penalty Fund, if not previously established by the TPM.
  - b. Deliver to the County a clean, irrevocable letter of credit issued by a banking institution approved by the County or escrow cash in an interest-bearing account with an escrow agreement acceptable to DPWES to secure the Applicant's obligations to make payments into the TDM Penalty Fund (the "Letter(s) of Credit or Cash Escrow(s)"). The Letter(s) of Credit or Cash Escrow(s) shall be issued in an amount equal to \$0.10 per gross square foot of new office uses and \$0.05 per gross square foot of new residential uses shown on the approved site plan for each new building on the Subject Property. Until the Letter(s) of Credit or Cash Escrow(s) has been posted, the figures in the preceding sentence shall be adjusted annually as set forth in Proffer 62. Once the Letter(s) of Credit or Cash Escrow(s) has been posted, there shall be no further adjustments or increases in the amount thereof. The Letter(s) of Credit or Cash Escrow(s) shall name the County as the beneficiary and shall permit partial draws or a full draw. The foregoing stated amount(s) of the Letter(s) of Credit or Cash Escrow(s) shall be reduced by the sum of any and all previous draws under the Letter(s) of Credit or Cash Escrow(s) and payments by the Applicant (or the TPM) into the TDM Penalty Fund as provided below.
- (vii) Monitoring. The Applicant shall verify that the proffered trip reduction goals are being met through the completion of Person Surveys and Vehicular Trip Counts of residential and/or office uses and/or other such methods as may be reviewed and approved by FCDOT. The results of such Person Surveys and Vehicular Trip Counts shall be provided to FCDOT as part of the Annual Report. Person Surveys and Vehicular Trip

Counts shall be collected for the Subject Property beginning one year following issuance of the final initial RUP or Non-RUP for the first new office or residential building to be constructed on the Subject Property. Person Surveys shall be conducted every three (3) years and Vehicular Trip Counts shall be conducted annually until the results of three (3) consecutive traffic counts collected upon Stabilization show that the applicable trip reduction goals have been met. Thereafter, Person Surveys and Vehicular Trip Counts shall be conducted every five (5) years. Notwithstanding the aforementioned, at any time prior to or after Stabilization, FCDOT may suspend or relieve the Applicant of annual Vehicular Traffic Counts or triennial Person Surveys if conditions warrant.

D. Remedies and Penalties.

- (i) Prior to Stabilization. If Prior to Stabilization the TDM Program monitoring reveals that the Maximum Trips After Reduction for the Subject Property is exceeded, the TPM shall meet and coordinate with FCDOT to address, develop and implement such remedial measures as may be, but not limited to those, identified in the TDM Plan and Annual Report.

Such remedial measures shall be funded by the TDM Remedy Fund as may be necessary and based on the expenditure program that follows:

<u>Trip Goals Exceeded</u>	<u>Remedy Expenditure</u>
Up to 1%	No Remedy needed
1.1% to 3%	1% of Remedy Fund
3.1% to 6%	2% of Remedy Fund
6.1% to 10%	4% of Remedy Fund
Over 10%	8% of Remedy Fund

If the results of the Vehicular Trip Counts conducted show that the trip reduction goals have been met on the Subject Property for three (3) consecutive years in accordance with the goals outlined in the table below, then a portion of the Remedy Fund as outlined in those same tables below shall be released to the building owners through the TPM. The amount released shall be relative to the amount contributed by those buildings constructed and occupied at the time Vehicular Trip Counts were collected. Any funds remaining in the Remedy Fund after such release shall be carried over to the next consecutive three (3) year period.

Up to 65,000,000 Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
0.0%-4.9%	30%
5.% - 10%	50%
10.1% - 15%	65%
15.1% - 18%	80%
18.1 - 20%	90%
>20%	100%

65-84,000,000 Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
0.0%-4.9%	50%
5% - 10%	65%
10.1% - 13%	80%
13.1% - 15%	90%
>15%	100%

84-90,000,000 Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
0.0%-4.9%	65%
5% - 8%	80%
8.1% - 10%	90%
>10%	100%

90-96,000,000 Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
0.0%-4.9%	80%
5% - 8%	90%
>8%	100%

96-113,000,000 Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
0.0%-4.9%	90%
>5%	100%

113,000,000+ Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 Years By:	Cumulative % Remedy Fund Returned
>0%	100%

There is no requirement to replenish the TDM Remedy Fund at any time. Any cash left in the TDM Remedy Fund shall be released to the Applicant once three (3) consecutive annual Vehicular Trip Counts conducted show that the Maximum Trips After Reduction have not been exceeded.

- (ii) Following Stabilization. If the TDM Program monitoring reveals that the Maximum Trips After Reduction for the Subject Property is exceeded, then the TPM shall meet and coordinate with FCDOT to address, develop and implement such remedial measures as may be identified in the TDM Plan and Annual Report and funded by the TDM Remedy Fund as may be necessary, commensurate with the extent of deviation from the Maximum Trips After Reduction goal as set forth in accordance with the expenditure schedule outlined above.

If the results of the Vehicular Trip Counts conducted upon-Stabilization show that the trip reduction goals have been met site-wide for three (3) consecutive years in accordance with the goals outlined on the table above, then any remaining Remedy Funds shall be released back to the building owners through the TPM.

If despite the implementation of remedial efforts, the applicable Maximum Trips After Reduction (based on the existing development levels in the Tysons Corner Urban Center as described in this Proffer are still exceeded after three (3) consecutive years, then, in addition to addressing further remedial measures as set forth in this Proffer, the TPM shall be assessed a penalty according to the following:

Exceeded Trip Goals	Penalty
Less than 1%	No Penalty Due
1% to 3%	5% of Penalty Fund
3.1% to 6%	10% of Penalty Fund
6.1% to 10%	15% of Penalty Fund
Over 10%	20% of Penalty Fund

Penalties may be incurred in subsequent Stabilization years when the applicable Maximum Trips After Reduction for the Subject Property continue to be exceeded and provided there are funds still available in the Penalty Fund.

The Applicant through the TPM shall make the payments required by this Proffer into the TDM Penalty Fund upon written demand by the County, and the County shall be authorized to withdraw the amounts on deposit in the TDM Penalty Fund. If the TPM fails to make the required penalty payment to the TDM Penalty Fund within thirty (30) days after written demand, the County shall have the ability to withdraw the penalty amount directly from the Letter(s) of Credit or Cash Escrow(s).

The maximum amount of penalties associated with the Subject Property, and the maximum amount the TPM shall ever be required to pay pursuant to the penalty provisions of this Proffer, including prior to and after Stabilization, shall not in the aggregate exceed the amount of the Letter(s) of Credit or Cash Escrow(s) determined and computed pursuant to the provisions of this Proffer. There is no requirement to replenish the TDM Penalty Fund at any time. The Letter(s) of Credit and/or any cash left in the Cash Escrow(s) shall be released to the Applicant through the TPM once three (3) consecutive Vehicular Trip Counts conducted after Stabilization show that the Maximum Trips After Reduction for the Subject Property have not been exceeded.

- E. Additional Trip Counts. If an Annual Report indicates that a change has occurred that is significant enough to reasonably call into question whether the applicable vehicle trip reduction goals are continuing to be met, then FCDOT may require the TPM to conduct additional Vehicular Trip Counts (pursuant to the methodology set forth in the TDM Plan) within 90 days to determine whether in fact such objectives are being met. If any such Vehicular Trip Counts demonstrate that the applicable vehicle trip reduction goals are not being met, then the TPM shall meet with FCDOT to review the TDM strategies in place and to develop modifications to the TDM Plan to address the surplus of trips.
- F. Review of Trip Reduction Goals. At any time and concurrent with remedial actions and/or the payment of penalties as outlined herein, the TPM may request that FCDOT review the vehicle trip reduction goals established for the Subject Property and set a revised lower goal for the Subject Property consistent with the results of such surveys and traffic counts provided for by this Proffer. In the event a revised lower goal is established for the Subject Property, the Maximum Trips After Reduction shall be revised accordingly for the subsequent review period without the need for a PCA.
- G. Continuing Implementation. The TPM (through the UOA) shall bear sole responsibility for continuing implementation of the TDM Program and compliance with this Proffer after the end of the Applicant Control Period. The TPM shall continue to administer the TDM Program in the ordinary course in accordance with this Proffer including submission of Annual Reports.
- H. Notice to Owners. All owners of the Subject Property shall be advised of the TDM Program set forth in this Proffer. The then current owner shall advise all successor owners and/or developers of their funding obligations pursuant to the requirements of this Proffer prior to purchase and the requirements of the TDM Program, including the annual contribution to the TDM Program (as provided herein), shall be included in all initial and subsequent purchase documents.
- I. Enforcement. If the TPM fails to submit a report to FCDOT within the time frames required by this Proffer, the TPM shall have sixty (60) days within which to cure such violation. If after such sixty (60) day period the TPM has not

submitted the delinquent report, then the TMP (or UOA as applicable) shall be subject to a penalty of \$100 per day up to a maximum of \$36,500 per incident until such time as the report is submitted to FCDOT. Such penalty shall be paid to Fairfax County to be used for transit, transportation, or congestion management improvements within the vicinity of the Subject Property.

45. Transportation Demand Management for Retail/Hotel Uses. As provided in the above Proffer, certain components of the TDM Plan are applicable to and would benefit the retail and/or hotel uses proposed on the Subject Property. Therefore, the Applicant will provide an additional TDM program tailored to specifically serve the Retail and/or Hotel Uses (the "Retail/Hotel TDM Program"), which may be developed on the Subject Property. In no event will remedies and/or penalties be assessed against any Retail/Hotel Uses.

- A. Goals of the Retail/Hotel TDM Program. Because tenants of the Retail stores and Hotels and their employees work hours that are atypical of the standard work day, these tenants and their employees do not necessarily travel to and from the Subject Property during Peak Hours. Given this, the Retail/Hotel TDM Program shall encourage Retail tenants, Hotel Guests and the Retail/Hotel employees to utilize transit, carpools, walking, biking and other non-Single Occupancy Vehicle ("non-SOV") modes of transportation to travel to and from the Subject Property rather than focusing on the specific trip reductions during the weekday AM or PM Peak Hours.
- B. Components of the Retail/Hotel TDM Program. The Retail/Hotel TDM Program shall include, at a minimum, the components applicable to the Subject Property that are described in this Proffer and the additional components provided below. These additional components may be subsequently amended by mutual agreement between the Applicant and FCDOT. All amendments to the components of the Retail/Hotel TDM Program contained in this Proffer shall be approved by FCDOT and will not require a PCA.
- C. Employee/Tenant Meetings. The TPM shall hold, at a minimum, an annual TDM meeting with the Retail store tenants and Hotel Managers, and their respective employees, to review the available transit options, changes in transit service and other relevant transit-related topics. Based on these meetings, the TPM shall work with Fairfax County to consider changes to the relevant services, such as changes to bus schedules, if such changes would provide better service to the Subject Property tenants and their employees.
- D. Regional TDM Programs. The TPM shall make information available to Retail store tenants, Hotel Guests and the Retail/Hotel employees about regional TDM programs that promote alternative commuting options. This shall include information on vanpools, carpools, guaranteed ride home and other programs offered by organizations in the Washington, D.C. Metropolitan Area.

- E. Retail/Hotel TDM Program Participation Outreach. The TPM shall endeavor in good faith to encourage participation by Retail store tenants and Hotel Management in the Retail/Hotel TDM Program, including the encouragement of a financial participation by such tenants through their direct offering of transit benefit programs and transit incentives to their employees. The TPM shall include a report to the County with respect to the activities described in the TDM Proffer as part of the Annual Report to be filed with the County. This report shall include detailed accounts of the outreach efforts and the feedback and response from the tenants.
46. Existing Uses. Certain components of the TDM Plan may be applicable to and could benefit tenants/employees of the existing uses on the Subject Property. The TPM shall make available information on those components to any existing occupied use which is located on the Subject Property. Such uses shall not be subject to monitoring nor will remedies and penalties be assessed against those existing uses.

#### AFFORDABLE/WORKFORCE HOUSING

47. Affordable Dwelling Units. If required by the provisions of Part 8 of Article 2 of the Zoning Ordinance, Affordable Dwelling Units ("ADUs") shall be provided pursuant to said regulations unless modified by the ADU Advisory Board.
48. Workforce Dwelling Units. In addition to any ADUs that may be required pursuant to these Proffers, the Applicant shall also provide for-sale and/or rental housing units on the Subject Property in accordance with the Board of Supervisors' Tysons Corner Urban Center Workforce Dwelling Unit Administrative Policy Guidelines dated June 22, 2010. Workforce Dwelling Units ("WDUs") shall be provided such that the total number of ADUs, if any, plus the total number of WDUs results in not less than twenty percent (20%) of the total residential units constructed as part of the Proposed Development. The 20% applies to the total number of dwelling units to be constructed on the Subject Property. If ADUs are provided in the development, both the ADUs and the ADU bonus units shall be deducted from the total number of dwelling units on which the WDU calculation is based.

The WDUs generated by each residential building on the Subject Property shall be provided within said building, however the Applicant reserves the right to consolidate the WDUs into one or more buildings with the build-out of the Subject Property and thereby increase the number of WDU units in one or more buildings beyond twenty percent (20%) with a corresponding decrease in the number of WDU units in the other buildings. The WDUs in each building shall have a bedroom mix similar to that provided in the market rate units in such building. Additionally, in the event that parking spaces are guaranteed to be made available for lease to individual market rate dwelling units, at least one (1) parking space shall be made available for lease by each ADU and/or WDU in the development.

Notwithstanding the foregoing, should the Board of Supervisors' policies related Workforce Dwelling Units in Tysons Corner be amended, the Applicant reserves the right, at its sole discretion, to opt in to the new policies, in part or in whole, without the need for a PCA and, if the Applicant so opts into any such new policies, the provisions of this Proffer which relate to the new policies of the Board of Supervisors which Applicant has elected to opt into shall no longer be effective. Furthermore, the Applicant reserves the right to enter into a separate binding written agreement with the appropriate Fairfax County agency as to the terms and conditions of the administration of the WDUs following approval of this Application. Such an agreement shall be on terms mutually acceptable to both the Applicant and Fairfax County and may occur after the approval of this Application. Neither the Board of Supervisors nor Fairfax County shall be obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the WDUs shall be administered solely in accordance with such an agreement and the provisions of this Proffer as it applies to WDUs shall become null and void. Such an agreement and any modifications thereto shall be recorded in the land records of Fairfax County.

49. Office and Non Residential Contributions to Affordable/Workforce Housing. For new office and other non-residential uses on the Subject Property, the Applicant shall select, within its sole discretion, one of the following two options for contributing toward the provision of affordable and/or workforce housing within Tysons Corner. These contributions shall be made to the Board, be deposited in a specific fund to be used solely for this purpose within Tysons Corner and shall be payable at the time of issuance of the Non-RUPs for new office s or other non-residential buildings on the Subject Property. The options shall consist of either (i) a one-time contribution of \$3.00 for each square foot of GFA of new office or other non-residential use, or (ii) an annual contribution of \$0.25 for each square foot of GFA of new office or other non-residential use continuing for a total of 16 years. Under either option, GFA associated with Retail/Service uses and public uses are excluded from the contribution.

#### PARK AND RECREATIONAL FACILITIES

50. Publicly Accessible Parks and Recreational Facilities. The Applicant shall provide park spaces and recreational facilities on the Subject Property that will be open and accessible to the general public as depicted on the CDP. For areas that are not specifically dedicated to the Fairfax County Park Authority ("FCPA") for park purposes, the Applicant shall retain the area(s) in fee simple, record public access easement(s) ensuring that the park space is open to the public for periods of times consistent with traditional Fairfax County parks, or other times as agreed to with the FCPA, subject to usual and customary rules and regulations, and provide for perpetual private maintenance. The Applicant shall also enter in to an agreement with FCPA to plan and coordinate activities and events within the publicly accessible park areas and shall coordinate with FCPA to ensure such park areas are included on the FCPA's website to encourage public use. A wayfinding and signage system shall be developed in coordination with FCPA at the time of FDP and site plan approval and installed by the Applicant to ensure the public can easily identify and access all publicly accessible park spaces. The following parks and facilities shall be



provided as generally shown on the CDP, with more specific details provided at the time of FDP approval. Additional or substitute recreational facilities to those listed below may be approved with the FDP provided such facilities result in an equivalent or enhanced quality of recreational opportunities. With each FDP that includes publically accessible park areas, the Applicant shall assess the opportunity to increase active recreational facilities over that shown on the CDP and provide additional active recreational facilities when feasible.

A. Public Urban Park North (1) – A street level plaza of approximately 36,000 square feet is to be located between Buildings D3 and D4 as generally depicted on Sheets L-7 and L-10. This civic plaza shall remain in private ownership as a public park space with appropriate access easements as noted in these Proffers. The park shall be constructed commensurate with the construction of Buildings D3 and D4 and shall include:

- (i) a mixture of hardscaping and landscaping;
- (ii) outdoor seating; and
- (iii) a designated space to accommodate public art, including visual arts exhibits and small scale performing arts.

The Applicant shall coordinate with FCPA to permit and publicize art performances, art fairs, and rotating art exhibits within the park.

B. Public Urban Park (2) – A street level park of approximately 14,500 square feet is to be located at the corner of Tyco Road and Broad Street as generally depicted on Sheets L-7 and L-16 of the CDP. The Applicant shall offer to dedicate this area to the FCPA for park purposes at the time of site plan approval for Building D4. Based on the FCPA's decision with regard to dedication and use of this park area, the park area shall be developed in one of the following manners:

- (i) Should FCPA decide to accept dedication and maintenance of the park area with the intention of utilizing it as a public park, the Applicant shall construct on the site either: 1) a skate park with "skateable art", hardscaping, landscaping, and outdoor seating; 2) or a dog park with hardscaping, landscaping, fencing and outdoor seating, as determined by FCPA. The park shall be designed to allow future expansion on to adjacent property.
- (ii) Should Fairfax County and FCPA decide that they prefer to accept dedication of the park area for the purpose of selling it for parkland elsewhere in the Tysons West area or trading it for parkland elsewhere in the Tysons West area, the Applicant shall not construct the skate park, but shall instead install and maintain a fenced area on the site appropriate for dog exercise area on an interim basis until such time as the land is sold or traded. Under these circumstances, the Applicant shall contribute the

estimated cost of the proposed skate park component and outdoor seating to the County for use in developing park facilities in the Tysons West area.

- (iii) Should FCPA decide not to accept dedication of the park area, the park area shall remain in private ownership as a public park space with appropriate access easements as noted in these Proffers. Under these circumstances, the Applicant shall develop the park area as a dog park with hardscaping, landscaping, and outdoor seating and enter into an agreement with FCPA for the Applicant or its successors to provide perpetual maintenance of the park.
  - (iv) Construction of the park improvements shall be substantially complete within 18 months of the issuance of the first RUP for Building D4 and dedication, if applicable, shall occur prior to bond release for that same building.
- C. Public Urban Park (3) – a street level plaza of approximately 4,350 square feet is to be located adjacent to Buildings D5 as generally depicted on Sheets L-7. It shall include hardscaping, specialty landscaping and outdoor seating, the details of which shall be detailed at FDP. The park design may also need to accommodate an interim fire lane turn-around until such time as Pierpoint Street is extended to the west. This plaza shall remain in private ownership as a public park space with appropriate access easements as noted in these Proffers.
- D. Public West Sky Park (4) – an elevated park of approximately 29,000 square feet to be located a top the parking podium of Building D1 as generally depicted on of the CDP. Well marked entrances and elevators to the West Sky Park shall be provided from Pierpoint Street and Leesburg Pike, similar in character to that shown on Sheet A-19.0 of the CDP. As shown on Sheets L-11 and L-12 of the CDP, the West Sky Park shall include:
- (i) a running track;
  - (ii) golf putting greens;
  - (iii) a yoga/exercise area; and
  - (iv) outdoor seating.

It is anticipated that the West Sky Park could be expanded with the potential development of buildings to the east and that the expanded space could be utilized for a partial athletic field in lieu of some of the uses specified above. Should this occur, the Applicant shall grant the necessary easements to facilitate construction of the park expansion by others.

- E. Public East Sky Park (5) – an elevated park of approximately 13,500 square feet to be located a top the parking podium of Building D6 as depicted on the CDP. Well marked entrances and elevators to the East Sky Park shall be provided from

Pierpoint Street and Leesburg Pike, similar in character to that shown on Sheet A-19.0 of the CDP. As shown on Sheet L-13 and L-14 of the CDP, the East Sky Park shall include:

- (i) play area for children ages 2-5;
- (ii) play area for children ages 5-12;
- (iii) loose chairs and lounges; and
- (iv) small outdoor café or vending station.

It is anticipated that the East Sky Park could be expanded with the potential development of buildings to the south. Should this occur, the Applicant shall grant the necessary easements to facilitate construction of the park expansion by others.

51. Private Amenities and Recreation Facilities for Residents. The Applicant shall provide on-site recreational facilities for the future residents of the Subject Property. Pursuant to Par. 2 of Sect. 6-110 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall expend a minimum of \$1700 per market-rate and workforce residential unit on such recreation facilities. Prior to final bond release for each building constructed on the Subject Property, the balance of any funds not expended on-site, as determined by DPWES shall be contributed to the FCPA for the provision of recreation facilities serving Tysons Corner.

The specific facilities and amenities to be provided for each individual residential building or shared between two or more buildings, which shall be for the use and enjoyment of those building(s) residents, shall be determined at the time of FDP approval. Amenities to be provided may include but not be limited to:

- A. Private exterior recreational areas/courtyards on the upper level of the parking podiums with seating areas, specialty landscaping, lawn and/or shaded areas and hardscape areas, and may also include a volleyball court, putting green, bocci court, boules court, board game tables, or similar recreational facility as generally shown on Sheets L-15 of the CDP or as may be approved with the FDP;
- B. Private exterior recreational area on the roof or podium level with a swimming pool, lounge deck, and shade structure;
- C. Interior fitness center, a minimum of 1,000 square feet in size, furnished with exercise equipment such as stationary bikes, treadmills, weight machines, free weights, etc., but not necessarily staffing; and
- D. Clubroom for resident gatherings and/or media/entertainment center.

52. Athletic Field Construction. To address the Comprehensive Plan's recommendations regarding the provision of athletic fields in Tysons, the Applicant shall provide a contribution of \$0.75 for each square foot of new space constructed on the Subject

Property to the FCPA to fund the design and construction of a new rectangular athletic field with synthetic turf and field lights within the FCPA Raglan Road Park, as may be shown on an approved park master plan for Raglan Road Park (the "Raglan Road Park Field"). The contributions shall be payable at the time of issuance of the first RUP or non-RUP as applicable, for each new building on the Subject Property.

In the event, the Raglan Road Park Field is not constructed, said contributions to the FCPA shall be utilized to support the provision of other active recreation facilities either through land acquisition or facility development in Tysons.

### PUBLIC FACILITIES

53. Fire and Rescue Station Contribution. The Applicant shall contribute \$2.00 per new square foot of GFA constructed on the Subject Property for the construction of a new Fairfax County Fire and Rescue Station (the "New Station") on property subject to RZ 2010-PR-014-B. The contributions shall be payable at the time of issuance of the first RUP or non-RUP as applicable, for each new building on the Subject Property. Any such contributions due prior to delivery of the New Station to Fairfax County shall be paid by the Applicant to Fairfax County. Any such contributions following the delivery of the New Station to Fairfax County shall be paid by the Applicant directly to the applicant of RZ 2010-PR-014-B, or its successors or assigns. In this instance, the Applicant shall demonstrate to DPZ and DPWES, as applicable, that such contribution has been made prior to the issuance of the first RUP or Non-RUP for each new building.
54. Interim Fire Station Circulation Improvements. In the event that the existing Fire and Rescue Station on the Subject Property has not been relocated by the time Building D5 is constructed or Pierpoint Street is constructed across Parcel 57B, the Applicant shall provide interim circulation improvements to the existing Fire and Rescue Station as generally shown on Sheets 18 through 18B of the CDP, if such improvements have not been previously completed by others. During the construction of the improvements, the Applicant shall ensure that the existing station remains fully functional, with the ability to maintain fire and rescue operations, fuel and test equipment, and park a minimum of 22 cars. Testing of equipment and parking of cars may occur off-site on adjacent properties, as may be approved by the Fire Department. Modifications to the interim improvements may be permitted without the need for a PCA, CDPA or FDPA with approval of DPZ and the Fairfax County Fire & Rescue Department. The improvements shall be completed prior to the issuance of the first RUP or Non-RUP for Building D5.
55. Public School Contribution. Per the Residential Development Criteria Implementation Motion adopted by the Board of Supervisors on September 9, 2002, and revised July, 2006, the Applicant shall contribute \$9,378 per expected student (based on a ratio of 0.087 student per multi-family residential unit) to the Fairfax County School Board to be utilized for capital improvements to schools that serve the Tysons Corner area. Such contribution shall be made on or before the issuance of the first RUP for each residential

building on the Subject Property and shall be based on the actual number of dwelling units built in each building.

If, prior to site plan approval for the respective residential buildings, Fairfax County should modify, on a county-wide basis, the expected ratio of students per subject multi-family unit or the amount of the contribution per student, the amount of the contribution shall be modified for that building to reflect the then current ratio and/or contribution.

56. Electric Transmission Line Relocation. The Applicant shall make a monetary contribution to Fairfax County towards the relocation and undergrounding by others of the existing electric transmission line located between the Dominion Power Tyco electric substation and a future Dominion Power substation anticipated to be located south of Route 7. The Applicant's percentage share of this undergrounding project shall be equal to the percentage of linear feet of the existing transmission line actually located on the Subject Property, however in no event shall the Applicant's share exceed \$150,000. Said contribution shall be provided prior to the issuance of the initial RUP or Non-RUP for Building D4 or at the initiation of construction of the relocation/undergrounding project, whichever shall occur last.
57. Arts and Entertainment. The Applicant shall coordinate with the Fairfax Arts Council to identify art related uses that may be appropriate to include in the Proposed Development. Such uses may, at the Applicant's sole discretion, be included on an interim or permanent basis.

#### STORMWATER MANAGEMENT

58. Stormwater Management. Stormwater Management (SWM) measures for the Subject Property shall be designed to protect receiving waters downstream of Tysons Corner by reducing runoff from impervious surfaces using a progressive approach. This progressive approach shall, to the maximum extent practicable, strive to retain on-site and/or reuse the first inch of rainfall. Proposed SWM and Best Management Practice (BMP) facilities shall follow a tiered approach as identified by the County which may include infiltration facilities (where applicable), rainwater harvesting/detention vaults, runoff reducing and other innovative BMPs. The specific SWM Facilities shall be determined at the time of FDP approval and subsequent Site Plan approval, and as may be approved by the DPWES. Each FDP shall include the location and preliminary design of the SWM Facilities including the access points to underground vaults. Access points, detailed at the time of FDP, will be located outside of the landscape amenity panel and sidewalk zone of the streetscape.

Plans shall make use of certain LID techniques that will aid in runoff volume reduction and promote reuse throughout the site. As a part of the LID techniques proposed, the Applicants shall provide green roofs both intensive and/or extensive. Other LID techniques may include, but not be limited to, tree box filters, pervious hardscapes/streetscapes, and stormwater reuse for landscape irrigation and air conditioning unit makeup water.

At the time of each FDP and Site Plan submission, the Applicants shall provide calculations showing the proposed volume reductions and shall work cooperatively with DPWES and DPZ to ensure that the first inch of rainfall is retained or reused to the maximum extent practicable. This requirement may be met on an individual building basis or based upon the total area of the Subject Property.

Additionally, the SWM Facilities shall be designed to accommodate not just the pre-developed (existing) peak release rates, but also strive to preserve and/or improve the pre-developed (existing) runoff volumes as contemplated within current LEED requirements, depending on the existing impervious condition. The above noted SWM Facilities shall be designed to (where applicable) meet the requirements of LEED 6.1 and 6.2 for each building/phase of the development based upon the LEED Boundary identified with each building/phase.

While it is anticipated that compliance with the Comprehensive Plan goal of retaining and/or reusing the first inch of rainfall will be confirmed at FDP and Site Plan utilizing the currently proposed retention credits (up to 1.4") identified by Fairfax County as part of their stormwater spreadsheet, the Applicant reserves the right to utilize any combination of LIDs (existing and future) measures to meet this goal, subject to the review and approval of DPWES.

It is further understood that seasonal variations in reuse water demand will create fluctuations in the draw down period, and as such, the stormwater system will be designed (to the extent practicable) to not exceed 10 days of storage. If storage time exceeds 10 days, the Applicant shall have the right to discharge excess volumes off site at release rates as allowed by the PFM.

#### MISCELLANEOUS

59. Zoning Administrator Consideration. Notwithstanding the foregoing, upon demonstration by the Applicant that, despite diligent efforts or due to factors beyond the Applicant's control, the required transportation, traffic signal, publicly accessible park areas, athletic field improvements, or other proffered improvements have been delayed (due to, but not limited to an inability to secure necessary permission for utility relocations and/or VDOT approval for traffic signals, necessary easements, site plan approval, etc.) beyond the timeframes specified, the Zoning Administrator may agree to a later date for completion of these improvement(s).
60. Condemnation Procedures. The development of the Subject Property in accordance with these Proffers anticipates the acquisition of property, rights-of-way and/or easements from parcels that are not part of the Subject Property (collectively referred to as the "Off-Site Parcels"). The Applicant shall use its good faith efforts and offer a reasonable fair market value for said property, right-of-way and/or easements. In the event the Applicant is not able to acquire the property, rights-of way and/or easements from the Off-Site Parcels necessary to fulfill the obligations described herein, the Applicant shall

demonstrate its efforts in writing and submit a written request to Fairfax County to acquire the property, rights-of way and easements by means of its condemnation powers.

In conjunction with any such request, the Applicant shall forward to the appropriate County agency: (a) plat, plans and profiles showing the necessary property, rights-of way and/or easements to be acquired; (b) an appraisal, prepared by a MAI (Member of the Appraisal Institute) independent appraiser approved by the County, of the value of the property, rights-of way and/or easements to be acquired and of all damages, if any, to the residue of the Off-Site Parcel; (c) a sixty (60) year title search certificate of the Off-Site Parcel from which the property, rights-of way and/or easement is to be acquired; and (d) cash in an amount equal to appraised value of the property, rights-of-way and easements and of all damages to the residue of the Off-Site Parcel; and (e) a copy of written offers and counteroffers and evidence of owners refusal of such offers and counteroffers. In the event the Owner of the Off-Site Parcel is awarded more than the appraised value of the Off-Site Parcel and of the damages to the residue in a condemnation suit, the Applicant shall pay the amount of the award in excess of cash amount to the County within fifteen (15) calendar days of said award. It is understood that the Applicant upon demand shall pay all other costs incurred by the County in acquiring the easements to the County.

Prior to and during any potential condemnation proceedings, the Applicant, its successors and assigns, shall be permitted, at its own risk, to submit, process and receive approval of the Site Plan and related subdivision plat(s), easement plats, development permits, building plan approvals and building permits for other portions of the Subject Property.

61. Metrorail Tax District Buyout for Certain Residential Uses. At least sixty days prior to recording any residential condominium documents for portions of the Subject Property located within the now existing Phase I Dulles Rail Transportation Improvement District (the "Phase I District"), the Applicant shall provide a written notice to the Director of the Real Estate Division of the Fairfax County Department of Tax Administration advising that the Applicant intends to record condominium documents for that portion of the Subject Property. Prior to recording the condominium documents, the Applicant shall pay to Fairfax County a sum equal to the then-present value of Phase I District taxes based on the use of that portion of the Subject Property subject to the condominium prior to this Rezoning that will be lost as a result of recording the condominium documents, in accordance with a formula approved by the Fairfax County Board of Supervisors.
62. Adjustment in Contribution Amounts. All monetary contributions specified in these Proffers, with the exception of the contributions to the Tysons Grid Fund and public schools, shall adjust on a yearly basis from the base month of January 2013 and change effective each January 1 thereafter, based on changes in the Consumer Price Index for all urban consumers [1982-84=100] (not seasonally adjusted) ("CPI-U"), both as permitted by VA. Code Ann. Section 15.2-2303.3.

63. Advanced Density Credit. Advanced density credit is reserved consistent with the provisions of Par. 4 of Sect. 2-308 of the Zoning Ordinance for all eligible dedications described herein or as may be required by Fairfax County or VDOT.
64. Tyson's Partnership. The Applicant and successors shall become a member in the Tyson's Partnership, or its residential equivalent.
65. Severability. Pursuant to Section 18-204 of the Zoning Ordinance, any portion of the Subject Property may be the subject of a PCA, Special Exception ("SE"), Special Permit ("SP"), or FDPA without joinder and/or consent of the owners of the other portions of the Subject Property, provided that such PCA, SE, SP or FDPA does not materially adversely affect the other phases. Previously approved zoning applications applicable to the balance of the Subject Property that is not the subject of such a PCA, SE, SP or FDPA shall otherwise remain in full force and effect.
66. Successors and Assigns. These Proffers will bind and inure to the benefit of the Applicant and their successors and assigns. Each reference to "Applicant" in this proffer statement shall include within its meaning and shall be binding upon Applicant's successor(s) in interest and/or the owners from time to time of any portion of the Subject Property during the period of their ownership.
67. Counterparts. These Proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which taken together shall constitute but one and the same instrument.

EXHIBIT:

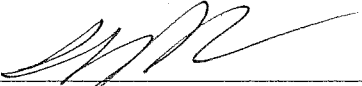
- A Existing Uses: Non-RUPs, Tenants and Uses as of November, 2012

[SIGNATURES BEGIN ON NEXT PAGE]



APPLICANT/CONTRACT PURCHASER  
OF TAX MAP 29-3 ((1)) 57B and 57G and 29-1 ((1)) 18C

GEORGELAS GROUP LLC

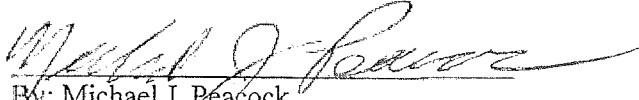
  
\_\_\_\_\_  
By: Theodore J. Georgelas  
Its: Manager

[SIGNATURES CONTINUE ON NEXT PAGE]

TITLE OWNER OF TAX MAP 29-3 ((1)) 54A

B.P. REALTY, L.P.

By: MB Peacock, LLC, its General Partner

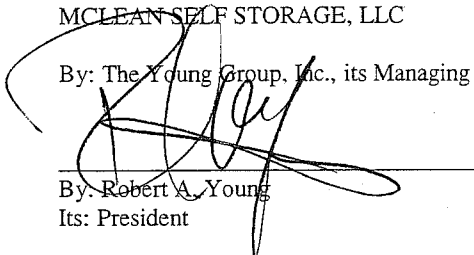
  
By: Michael J. Peacock  
Its: Vice President

[SIGNATURES CONTINUE ON NEXT PAGE]

TITLE OWNER OF TAX MAP 29-3 ((1)) 57

MCLEAN SELF STORAGE, LLC

By: The Young Group, Inc., its Managing Member



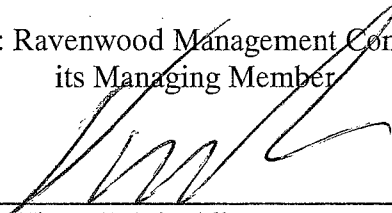
By: Robert A. Young  
Its: President

[SIGNATURES CONTINUE ON NEXT PAGE]

TITLE OWNER OF TAX MAP 29-1 ((1)) 18C and 29-3 ((1)) 57G

RMC-TYCO, L.L.C.

By: Ravenwood Management Company, R.L.L.L.P.,  
its Managing Member



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By: Victor F. Rinaldi  
Its: General Partner

[SIGNATURES CONTINUE ON NEXT PAGE]

TITLE OWNER OF TAX MAP 29-3 ((1)) 57B

THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY,  
VIRGINIA


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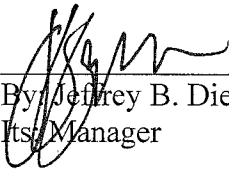
By: Edward L. Long, Jr.  
Its: County Executive

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CONTRACT PURCHASER OF TAX MAP 29-1 ((1)) 57

GD SPRING HILL METRO, LLC

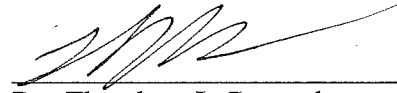
  
\_\_\_\_\_  
By: Theodore J. Georgelas  
Its: Manager

  
\_\_\_\_\_  
By: Jeffrey B. Dierman  
Its: Manager

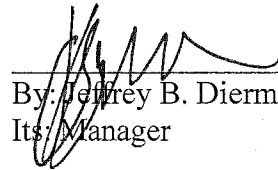
[SIGNATURES CONTINUE ON NEXT PAGE]

CONTRACT PURCHASER OF TAX MAP 29-3 ((1)) 54A

GDM SPRING HILL STATION, LLC

A handwritten signature in black ink, appearing to be 'TJG', written over a horizontal line.

By: Theodore J. Georgelas  
Its: Manager

A handwritten signature in black ink, appearing to be 'JBD', written over a horizontal line.

By: Jeffrey B. Dierman  
Its: Manager

[SIGNATURES END]

Exhibit A

<b>8590 Leesburg Pike/TM 29-3 ((1)) 54A: NonRUPs, Tenants and Uses as of September 4, 2012</b>				
<b>Suite</b>	<b>Permit Number</b>	<b>Name</b>	<b>Use</b>	<b>Sq. Ft.</b>
A	110810130	Mina Design Gallery, Inc. First Floor	Retail Sales Establishment	10,000
B	"	"	"	
C	"	"	"	
D	103160256	Arlington Motorcar Service Inc.	Vehicle Sale, Rental, Ancillary Services (Must Comply with Zoning SE 201)	32,406
E	120200221	Atlantic Motors First Floor	Vehicle Sale Rental, Ancillary Service (Must Comply with SE 201)	914
F			Vacant	
Body Shop				
<b>8501, 8515, 8519, 8525 Tyco Road/TM 29-1 ((1)) 18C: NonRUPs, Tenants and Uses as of September 4, 2012</b>				
<b>Suite</b>	<b>Permit Number</b>	<b>Name</b>	<b>Use</b>	<b>Sq. Ft.</b>
8501-1A	122220276	Papa Johns	Business Service and Supply Service Establishment	1,546
8501-1B	A-2005-0179	Floor Discounters Inc.	Warehouse Establishment	2,040
8501-1C	A-2007-0588 Or A-0244-07	Labor Ready Or McCormick Paint Works Co.	Office Or Wholesale Trade Establishment	2,536 Or 2,888
8501-2A				
8501-2B	A-2218-94	Eurasian Service Center	Vehicle Major Service Establishment	4,503
8501-3A				
8501-3C				
8501-3B	112690171	Merrifield Oriental Rug Inc.	Wholesale Trade Establishment	3,450



**8590 Leesburg Pike/TM 29-3 ((1)) 54A:  
NonRUPs, Tenants and Uses as of September 4, 2012**

Suite	Permit Number	Name	Use	Sq. Ft.
8501-4	A-1996-0303	AAMCO Transmissions	Vehicle Major Service Establishment	5,497
8515	112580252	Express Auto Dreams	Heavy Equipment and Specialty Vehicle Sale	2,340
8519				
8525	92610139	Pete's Towing and Storage, LLC	Storage Yard NonRUP limited to 4 employees and 3 Company Vehicles	2,755

8590

8501

8515/8519/8525

Wholesale Trade Establishment -----	6,338 or 3,450	
Office -----	2,536(?)	
Retail Sales Establishment-----	10,000	
Vehicle Sale, Rental, Ancillary Services -----	33,320	
Business Service and Supply, accessory service -	1,546	
Vehicle Major Service Establishment-----	10,000	
Warehousing and Associated Retail Establishment	2,040	
Heavy Equipment and Specialty Vehicle Sales --		2,340
Storage Yard -----		2,755